AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-2-88
Vol. 53 No. 106
Pages 20089-20274

Federal Register

Thursday
June 2, 1988

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WHO: The Office of the Federal Register.

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: June 16; at 9:00 a.m.
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revisions of User Fees for Cotton Classification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as final rule the provisions of the proposed rule which decreased user fees for cotton classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act. The revision in user fees is being made in accordance with the provisions of the Uniform Cotton Classing Fees Act of 1987.

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Garry L. Lewicki, Cotton Division, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, D.C. 20090–6456.

SUPPLEMENTARY INFORMATION: A proposed rule which detailed the reduced user fees for cotton classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was published in the **Federal Register** on March 25, 1988 (53 FR 9774). The proposed rule stated that the reduced user fees were determined by applying the formula contained in the Uniform Cotton Classing Fees Act of 1987.

A 30-day comment period was provided to interested persons to submit their views on the proposed user fee reductions. The comment period ended April 25, 1988, with one comment received from a cotton producer trade organization, the Arizona Cotton Growers Association. This comment supported the fee reductions as being beneficial to cotton producers.

The user fee charged to cotton producers for manual cotton classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act was $1.20 per sample during the 1987 harvest season (52 FR 35219), as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The changes cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This rule decreases the fee for manual classification charged to producers from $1.20 to $1.03. This new fee is calculated by using the 1987 base fee adjusted for the rate of inflation, the projected size of the crop and the addition of a surcharge necessary to maintain an adequate operating reserve. The 1987 base fee is $1.11. A 3.3 percent increase due to the implicit price deflator amounting to an increase of 4 cents is added to the $1.11 resulting in a 1988 base fee of $1.15. The 1988 crop is currently estimated at 13,944,720 bales. The base fee is decreased by 15 percent based on the estimated size of the 1988 crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales). This percentage factor amounts to 17 cents and would be subtracted from the base fee of $1.15 resulting in a fee of $0.98. There is a surcharge of 5 cents added to the $0.98 fee since the projected operating reserve is less than 25 percent. The projected operating reserve is 13.94 percent. This establishes the fee at $1.03. No further adjustments are warranted under the formula.

Therefore, the fee for this service during the 1988 harvest season is $1.03. The additional fee for High Volume Instrument (HVI) classification is 50 cents per sample (resulting in a total fee of $1.70 for 1987). The fee for HVI classification is revised to $1.53 per sample. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per sample discount continues to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 also is decreased from $1.20 to $1.03 per sample since this fee is the same as the original classification fee. For the same reason the fee for HVI review classification is decreased from $1.70 to $1.53 per sample.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fees are decreased, thereby, lessening any impact on the affected persons; (2) the cost decrease will not affect competition in the marketplace; (3) the use of classification services is voluntary. The revisions reflect the Secretary's authority under the Cotton Statistics and Estimates Act to recover the costs, as nearly as practicable, of providing classification services under the provisions of the Uniform Cotton Classing Fees Act of 1987.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because the user fees should be made effective July 1, 1988, to be in effect at the beginning of the classing season so that the reduced fees are made applicable to all cotton classed this season.

List of Subjects in 7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

2. Paragraph (b) of § 28.909 would be revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of manual cotton classification service to producers is § 1.03 per sample.

* * * * *

3. Section 28.911 would be revised to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.03 per sample. The fee for HVI review classification is $1.53 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

Dated: May 31, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88–12552 Filed 6–1–88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 2003

Functional Organization of Farmers Home Administration

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations to reflect a reorganization of Divisions and Staffs reporting to the Assistant Administrator, Farmer Programs, to reflect additional programs under the Community Facilities Division in the Office of the Assistant Administrator—Community and Business Programs, to reflect a change of reporting with respect to controlled and jacketed correspondence from Administrative Services Division to the Deputy Administrator Program Operations, to reflect the establishing of the National Appeals Staff, and to reflect additional responsibilities of the Planning and Analysis Staff. The intended effect of this action is to provide a more efficient utilization of Agency personnel resources. This publication provides the functional statements for the affected organizational units.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Director, Personnel Division, Farmers Home Administration, Room 6900 South Building, 14th and Independence SW., Washington, DC 20250; Telephone (202) 382–1056.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This rule, however, relates only to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required.

Specific Changes Included in This Document Are:

(1) Reorganize the Office of Assistant Administrator, Farmer Programs, by abolishing two Divisions (the Farm Real Estate and Production Division and the Emergency Division), and establishing two Divisions (the Loan Making Divison and the Loan Servicing and Property Management Division) as well as establishing the Emergency Designation Staff and the Program Development Staff.

(2) Expand the existing responsibility of the Planning and Analysis Staff, responsibile to the Administrator, to include internal control responsibilities according to OMB Circular A–123 and the Federal Managers' Financial Integrity Act.

(3) Transfer administrative responsibility for response to controlled and jacketed correspondence from Administrative Services Division (responsible to the Assistant Administrator for Administration) to the Deputy Administrator for Operations, responsible to the Administrator.

(4) Transfer administration of certain types of loans and to add administration of certain types of loans to the Community Facilities Division, which is responsible to the Assistant Administrator—Community and Business Programs.

(5) Establish the National Appeals Staff, reporting to the Administrator, to both conduct appeals and review appeals hearings. The Staff is being established to comply with a recently enacted amendment to the Consolidated Farm and Rural Development Act to establish a "national appeals division."

These programs and activities are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

This final action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." FmHA has determined that this final action does not constitute a major Federal Action significantly affecting the quality of human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 2003

Organization and Functions (government agencies).

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for Part 2003 continues to read as follows:

Authority: 7 U.S.C. 1981 and 1989; 42 U.S.C 1471 and 1480; 5 U.S.C. 301 and 552; 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Section 2003.1 is revised to read as follows:

§ 2003.1 General.

Organization charts are made to show responsibilities and authorities. All officials must know the structure of the Farmers Home Administration (FmHA) organization. Exhibit A shows the assignment of functions for the National Office and the field. Exhibit B (available in any FmHA office) is the organization chart showing the FmHA structure.

3. Exhibit A to Subpart A of Part 2003 is revised to read as follows:

Exhibit A—U.S. Department of Agriculture, Farmers Home Administration

07 01 Office of the Administrator

A. Assignment of Functions

Responsible for:

1. The management and administration of the programs and support functions of the Farmers Home Administration (FmHA) which provide assistance to rural Americans and their communities in:

(a) Owning and operating family farms.
(b) Obtaining adequate, affordable housing.
(c) Having access to needed community facilities.
(d) Improving economic opportunity through business and industrial development.

2. Assisting the Secretary in carrying out the Secretary's responsibility for leadership and coordination of National and local rural development efforts.

B. Availability of Information

The Legislative Affairs and Public Information Staff, Washington, DC 20250, will handle all inquiries for information concerning FmHA programs. Freedom of Information inquiries are handled by the Administrative Services Division.

C. Regulations

Regulations governing FmHA programs are found in Title 7, Code of Federal Regulations, Parts 1804 through 2054.

D. Historical Documents

1. Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 et seq).

2. Title 5, Housing Act of 1949, as amended (42 U.S.C. 1471 et seq).

07 01 State Offices

Assignment of Functions

Provides overall direction of FmHA program operations at the State level, ensures adherence to program plans approved for the State by the Administrator, and renders staff advisory and manpower support to frontline operating personnel in the District and County offices. Has full responsibility for making and servicing business and industry loans.

07 01 District Offices

Assignment of Functions

Provides overall direction of FmHA program operations at the District level, ensures adherence to program plans approved for the District by the State Director and renders supervisory and advisory support to frontline operating personnel in the County Offices. Has full responsibility for making and servicing multi-family housing and community program loans and grants.

07 01 County Offices

Assignment of Functions

Executes the FmHA programs and activities in one or more counties or portions of counties, with major responsibility for conducting individual farm and home ownership programs.

07 01 00 0001 Legislative Affairs and Public Information Staff

Assignment of Functions

1. Advises the Administrator, or represents the Administrator in assisting and advising other Agency and Departmental officials, in policy matters relating to the development of legislation and development of regulations to implement legislation, and response to or relations with members and committees of Congress and the public.

2. Coordinates Agency preparation for Congressional hearings, including arrangement for witnesses and preparation of statements and other materials to be presented.

3. Serves as control point for securing and expediting Agency response to requests for legislative reports on bills introduced in Congress.

4. Maintains information files on legislation pending or enacted. Performs special fact finding work as assigned.

5. Responds to Congressional inquiries received by telephone or mail relating to Agency operations, programs and status of applications; coordinates Agency response to Congressional correspondence; handles or expedites response to inquiries which require same day service.

6. Provides the Administrator and the Agency with fast, accurate service in production of briefing material, speeches, Congressional testimony, and any other material requested; produces an inhouse newsletter "FYI", which provides Agency information to all FmHA employees, and FmHA publications generally, except for personnel and program instruction; assists State Directors and field offices with information efforts.

7. Maintains liaison and working relationship with the Office of Governmental and Public Affairs, the Office of the General Counsel and other Departmental units involved in Congressional relations and public information.

07 01 00 0002 Equal Opportunity Staff

Assignment of Functions

1. Responsible to the Administrator for the development and institution of plans, procedures and policies necessary for eliminating discrimination in FmHA programs and employment because of race, color, religion, sex, national origin, age, marital status, or handicap, and for such other activities as the Administrator may prescribe from time to time.

2. Administers laws, statutes, executive orders and Departmental regulations that assure equal opportunity in program participation and employment, including Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Title VII of the Civil Rights Act of 1964 (amended by the Equal Employment Act of 1972), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), Equal Credit Act of 1975 (also Equal Credit Opportunity Regulations B (12 CFR Part 202) effective March 23, 1977), and Executive Orders 11246 and 11478.

3. Provides research data to USDA Office of Minority Affairs and Office of Governmental and Public Affairs; works with the Justice Department, Department of Labor, Office of Personnel Management, Equal Employment Opportunity Commission and USDA's Office of Personnel and Minority Affairs on training and program coordination.

07 01 00 0003 Planning and Analysis Staff

Assignment of Functions

1. Responsible to the Administrator for the development and institution of plans, procedures, and policies necessary for the efficient and orderly management of activities related to program evaluation, management plans, audit liaison, internal control, and loan classification evaluation, and for such other activities as the Administrator may prescribe from time to time.

2. Develops policy, procedures, and guidance for the Agency-wide programs of Evaluation Reviews, Program Review Assistant (PRA) Reviews, Coordinated Assessment Reviews and Vulnerability Assessments to serve as management tools in evaluating county, district, state and National Office effectiveness and efficiency; conducts comprehensive analyses of the effectiveness of FmHA programs in the accomplishment of specific missions, makes evaluation of cost effectiveness and participates in special studies to resolve program issues; field tests new program evaluation methodologies to assure that programs can be successfully evaluated.

3. Formulates and develops Agency-wide management plans, the purpose of which is to plan and project the effective utilization of the Agency's resources; provides policy direction and accountability, and measures the performance and effectiveness of the Agency; monitors and assists County Offices, District Offices, State Offices, and units within the Finance Office and the National Office in executing the Agency's activities in meeting the needs of rural America; measures and evaluates the performance of the Agency in meeting the goals of the Administration through receipt and review of quarterly status reports from the State and National Offices.

4. Develops, implements, and monitors the operation of FmHA's internal control system in compliance with OMB Circular A-123 and the Federal Managers' Financial Integrity Act. Develops policy and procedure on sound management controls and internal control reviews. Tracks the resolution of recommendations for corrective actions resulting from internal control reviews, Office of the Inspector General (OIG) and Government Accounting Office (GAO) reviews, PRA Reviews, Coordinated Assessment Reviews and Agency evaluation reviews, and assures compliance with all tracking and followup requirements. Analyzes audit and review findings and trends and recommends changes for Agency-wide improvement.

5. Provides guidance and assistance to program staffs in the development of loan classification systems for providing management with information on loan quality, risks involved, and loss exposure.

6. Maintains liaison and working relationship with USDA Office of the Inspector General, Office of Budget and Policy Analysis, and the General Accounting Office; consults with professional accounting associations such as the American Institute of Certified Public Accountants and Association of Licensed Public Accountants.

07 01 00 0004 National Appeals Staff

Assignment of Functions

Responsible to the Administrator to assure development, implementation, monitoring and evaluation of operation of the National

Appeals program, and to perform such other activities as the Administrator may prescribe from time to time.

1. Plans, formulates and recommends broad current and long range plans, policies, and procedures for administering the appeals program.

2. Develops, prepares, and processes new regulations and policy issuances on assigned functions. Reviews FmHA State Directives for conformance with laws, regulations, and National Office procedures. Develops draft legislation and regulatory proposals and develops legislative reports. Responds to Government Accounting Office and Office of the Inspector General reports.

3. Conducts hearings to uphold, reverse, or modify applicable administrative decisions of an FmHA decision maker which adversely affect an applicant/borrower (or lender if a guaranteed loan is involved) and which the applicant/borrower/lender has appealed.

4. Reviews appeal hearings (hearing officer notes, tapes of transcripts, and docket contents) to ensure that time limitations have been observed, that the reasons for the decision are valid and clearly explained, that relevant facts are cited to support the decision, and that FmHA regulations are properly cited and utilized.

5. Evaluates the planning, developing, and conducting training programs by Staff employees in terms of regulatory coverage, presentation, subject matter coverage, and effectiveness.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the appeal program requirements or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 Deputy Administrator Program Operations

Assignment of Functions

1. Serves as top policy advisor to the Administrator on all program matters, directs the development or change and institution of plans, procedures and policies necessary for the efficient and orderly management of all assigned programs, and performs such other activities as the Administrator may prescribe from time to time.

2. Has primary responsibility for the overall operation and management of a broad and complete range of Farm, Family and Rural Development programs, with responsibility for the work of Agency program units in the areas of Community Programs and Business and Industry, Environment and Technology, Farmer Programs, and Single and Multi-Family Family Housing; provides advice and guidance to superiors, Assistant Administrators, Division Directors, and State Directors on all loan and grant making and servicing activities.

3. Maintains active liaison with all appropriate USDA and other Federal agencies that impact or have an interest in assigned program areas; cooperates and assists in areas of mutual concern; develops and maintains good, businesslike relations with a broad range of community and public interest groups, professional associations, advocate groups, and suppliers of materials and services.

4. Maintains good working relations with the Office of the General Counsel; stays currently informed on legal aspects of program operations and operates programs accordingly; keeps informed on environmental and technological matters relating to program operations; responds to Congressional inquiries on an accurate, timely, and professional basis and keeps appropriate members and staffs informed as needed on the conduct of assigned programs; directs the processing and control of jacketed correspondence; participates in budget, oversight and other designated hearings.

5. Establishes good, business-like working relationships with Assistant Administrators and Division Directors and provides them with sound, consistent advice and counsel. Maintains active interest in all program areas and keeps staff currently informed on policy items and other areas of interest.

07 02 00 0001 Program Support Staff

Assignment of Functions

1. Responsible to the Deputy Administrator Program Operations for recommending and maintaining policies and standards that are environmentally and technically sound, ensures compliance with objectives of enabling legislation and requirements of regulatory authorities relating to these issues as they affect FmHA programs. Incorporates proven technological advances into FmHA financial assistance programs and ensures those projects funded by FmHA are cost-effective, safe, and healthful, and will adequately met the needs of the owners. Reviews field operations to determine the appropriateness of current or proposed policies and standards to provide for more effective environmental and technical operations. Assists in developing an organizational structure necessary to ensure appropriate environmental and technical input into Agency operations.

2. Provides environmental and technical assessment of requests for Agency financial assistance and coordinates environmental and technical reuqirements and policies across the program divisions in order to maintain consistency. Keeps the Deputy Administrator and program personnel advised of the latest regulatory and state-of-the art approaches to proper design and construction.

3. Provides specialized professional advice and assistance to the Deputy Administrator and appropriate program officials in areas of architecture, engineering, land use planning, environmental analysis and all technical aspect of FmHA programs as required concerning loan-making, account servicing, management of inventory property, etc. Keeps appropriate program officials currently informed of pending requests and coordinates responses with such officials.

4. Serves as Agency contact and authority on specialized matters such as OMB Circular A–95, suspension and debarment, dam safety, historic preservation, National Environmental Policy Act, floodplains and wetlands, Secretary's Memoranda concerning Land Use Policy, and other major environmental laws and regulations, relocation and real property acquisition, Department of Labor construction contract provisions, handicapped accessibility, etc.; maintains a library of technical standards and references essential to the orderly operation of FmHA programs, makes recommendations to implement these matters and acts as a clearinghouse for distribution of these standards to staff personnel on a nationwide basis working in close cooperation with appropriate program officials.

5. Maintains liaison and working relationship with technical standards organizations, assists in coordinating technical changes in FmHA regulations with private and public interest groups affected; and participates in professional organization activities and seminars to maintain state-of-the art knowledge in the various areas of responsibility.

6. Assures that all activities affecting program matters will be closely coordinated with the appropriate program personnel.

07 02 01 Assistant Administrator—Housing

Assignment of Functions

Responsible to the Administrator and Deputy Administrator Program Operations for the development and implemention of plans, procedures and policies necessary for the efficient and orderly management of the Agency's total housing program, which extends housing credit to rural an small town people of limited resources, thus providing an opportunity to have decent housing in an acceptable environment, and for such other activities as the Administrator or Deputy Administrator may prescribe from time to time.

1. Provides executive leadership, formulates and coordinates policies and provides direction in carrying out single and multiple family housing and technical assistance programs in all States, the Pacific Trust Territories, Guam, Puerto Rico, and the Virgin Islands.

2. Administers and manages the sections 502 and 504 single family housing programs, section 515 rural rental program, rural housing site loans, rural cooperatives housing loans, farm labor housing loan and grant program, self-help technical assistance grant program and technical and supervisory assistance grant programs.

3. Administers and monitors the single family housing loan and grant operations through two divisions (Single Family Housing Processing Division and Single Family Housing Servicing and Property Management Division), and provides guidance and direction for conducting multiple family programs through two divisions (Multi-Family Housing Processing Division and Multi-Family Servicing and Property Management Division).

4. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public,

to discuss program requirements in general or to explain or defend the agency position taken on housing issues or anticipated policy changes.

5. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0001 Single Family Housing Processing Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for administering the Agency's single family housing rural loan and grant programs, and for such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for administering the loan making and related activities in the single family housing program which provides direct loans and grants to low income applicants, insured loans to low and moderate income families, and guaranteed loans to above moderate income families, also including special housing programs such as mobile home loans, individual condominiums, weatherization loans, single family housing programs under agreements with other departments, and special studies, projects and surveys related to single family housing.

2. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan making policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to the field organizations, and provides technical advice and assistance to National, State, and local FmHA employees.

4. Initiates planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

5. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Housing Program loan making requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0002 Single Family Housing Servicing and Property Management Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for servicing the Agency's multi-billion dollar portfolio of single-family housing loans and the management and sale of housing properties acquired by the agency, and for such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for servicing actions on outstanding loans, including resolution of borrower complaints about construction and problems with builders and developers; administers the Agency's compensation for construction defects program; counsels borrowers in financial management, budgeting, and in wise use of credit; conducts orderly servicing of real estate taxes, property insurance, and actions by third parties which jeopardize the interests of the borrower or the Government; oversees collection of loan payments, granting of interest credit and moratorium as necessary to be responsive to borrowers' change of circumstance and related appeals, graduation to other credit sources, assumption of loans or sale of property (including recapture of subsidy granted on the loans), and any other problems which arise during a borrower's ownership.

2. Liquidates loans when servicing actions have been ineffective in solving problems, including handling foreclosure appeals and securing repair, maintenance, management, lease, and sale of acquired property. Provides guidance to State and county office personnel in effective management of acquired property and contracting for procurement of supplies and services for repair and maintenance of inventory property.

3. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan servicing policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

4. Incorporates policy issuances into existing procedures. Prepares notices and amendments of issuance to the field organization, and provides technical advice and assistance to National, State, and local FmHA employees.

5. Initiates the planning, developing, implementing, and conductng training programs for State and local FmHA employees on assigned programs.

6. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Housing Program loan servicing and property management requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0003 Multi-Family Housing Processing Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for the efficient and orderly management of a nationwide program of rural rental housing loans, rural cooperative housing loans, congregate housing loans, labor housing loans and grants, rural housing site loans, self-help technical assistance grants, technical and supervisory assistance grants, and rental assistance programs, and such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for administering the multi-family housing program and evaluating the effectiveness of Agency goals and objectives; maintains a high level of knowledge of the statutes authorizing the respective programs, regulations, and circulars governing operation of the programs and of proposed changes on those statutes, regulations and circulars. Provides direction and guidance to State Office personnel in resolving complex problems of program administration. Maintains knowledge of social, economic, and general real estate and rural credit conditions, trends, and problems existing throughout the nation's rural areas. Reviews and provides guidance and authorization to State Directors on loans and grants of a complex and precedent setting nature and in excess of the State Director's approval authority.

2. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan making policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to the field organizations, and provides technical advice and assistance to National, State, and local FmHA employees.

4. Initiates the planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

5. Reviews, analyzes, and recommends action to be taken on cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Housing Program loan making requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 01 0004 Multi-Family Housing Servicing and Property Management Division

Assignment of Functions

Responsible to the Assistant Administrator—Housing for the development and institution of plans, procedures, and policies necessary for the efficient and orderly management of a nationwide program of servicing, recordkeeping and account servicing, real estate appraisals, and program evaluation of all multi-family housing programs, and for such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies and procedures for administering the servicing of all rural rental housing loans, labor housing loans and grants, and rural housing site loans; and the operation and review of multi-family housing appraisal functions.

2. Conducts program evaluations to ensure that State program operations are being effectively carried out as planned and are consistent with National and State loan servicing policies and procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective action to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to the field organization, and provides technical advice and assistance to National, State, and local FmHA employees.

4. Initiates planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

5. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves or recommends the disposition of problem cases submitted for technical review and approved by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the Multi-family Housing Program loan servicing requirements in general or to explain or defend the agency position taken on program issues or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 02 Assistant Administrator Farmer Programs

Assignment of Functions

Plans, organizes, directs, and controls the Agency's Farmer Programs. As such:

1. Responsible to the Deputy Administrator Program Operations for the development and institution of plans, procedures, and policies for effective, efficient, and orderly management of Farmer Programs (FP) responsibilities; provides leadership to ensure execution of policies and procedures by the Loan Making Division, Loan Servicing and Property Management Division, Emergency Designation Staff, Program Development Staff, and support functions, and for such other activities which the Administrator may prescribe from time to time.

2. Oversees administration and management of insured and guaranteed farm loan programs which includes making and servicing farm ownership loans (including nonfarm enterprise loans); farm operating (including youth) loans; natural disaster emergency loans; management and servicing of loans no longer authorized or funded.

3. Monitors, inspects, and evaluates the administration of loan programs as executed by FmHA field personnel on a nationwide basis; analyzes problems and takes action to implement corrective measures; develops and manages an equitable system of allocation of loan funds to States.

4. Develops and initiates action to implement cost reduction techniques for nationwide application in operation of loan programs; coordinates implementation of the debt management program and Presidential and Departmental directives to reduce loan losses as they apply to Farmer Programs.

5. Develops priorities for assisting Farmer Programs loan applicants and borrowers in the areas of farm management, supervision and planning, security servicing, collection of accounts, property management, loan making and other related aspects; develops and implements procedures that will preserve and strengthen the family owner-operator system of agriculture; ensures that borrower graduation policies are adhered to by field personnel.

6. Directs the preparation of budget estimates and projections for program operations; directs the drafting of legislation and legislative reports involving the farm loan programs.

7. Develops, monitors, and evaluates contracts for Farmer Programs activities. Recommends action on use of contracts to achieve effective program administration.

8. Maintains liaison and working relationship with key officials of the agency and institutions such as bankers, investment groups, agricultural credit firms and farm organizations; collaborates with the Secretary's Office, officials of other agricultural agencies, State agricultural colleges, non-Federal credit institutions, professional appraisal societies, and others, on matters of mutual concern; consults with and informs State and local Government officials on program matters; confers and works with the Office of the General Counsel, Office of the Inspector General, Office of Management and Budget, General Accounting Office, and others on program issues and matters of mutal concern; represents the Agency on Departmental, interdepartmental, and interagency task forces for developing public policy for improving services to the public.

07 02 02 0001 Farmer Programs Program Development Staff

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to assure development, implementation, monitoring and evaluation of program operations of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Plans, formulates and recommends current and long range plans, policies, and procedures for administering the direct and guaranteed FmHA farm loan making, servicing, and property management programs.

2. Develops, prepares, and processes new regulations and policy issuance on Farmer Program functions. Reviews FmHA State Directives for conformance with laws, regulations, and National Office procedures. Recommends corrections or modifications required for conformance. Develops draft legislation and regulatory proposals and develops legislative reports. Responds to Government Accounting Office and Office of the Inspector General reports.

3. Evaluates the planning, developing, and conducting training programs of Farmer Programs for FmHA employees in terms of regulatory coverage, presentation, subject matter coverage, and effectiveness.

4. Performs special studies and analyses relating to the farm loan making, loan servicing, and property management functions. Monitors, evaluates, and makes recommendations relative to Farmer Programs contracting activities.

5. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss the program requirements in general or to explain or defend the agency position taken on loan making decisions or anticipated policy changes.

6. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters

having interrelated application or mutual concern.

7. Monitors, evaluates, and makes field office staffing and reorganization recommendations directed toward more efficient and effective program administration.

07 02 02 0002 Farmer Programs Emergency Designation Staff

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to plan, organize, direct, and control the emergency designation function of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures for administering the FmHA emergency designation program.

2. Conducts the emergency disaster process for Presidential major disaster and emergency declarations, for Secretarial emergency area designation requests, and for FmHA State Director authorizations.

3. Participates in state-wide loan program evaluations to ensure that emergency designation procedures are being effectively carried out and are consistent with National and State procedures. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective actions to be taken. Follows up with field offices to assure accomplishment of corrective action.

4. Reviews complaints resulting from emergency designation actions taken by Agency headquarters or those taken at the State or lower level.

5. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on the emergency designation program operations.

6. Provides technical advice and assistance to National, State and local FmHA employees.

7. Reviews and analyzes emergency designation cases requiring prior clearance of the National Office. Recommends the disposition of cases submitted for technical review.

8. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public to discuss emergency designation requirements in general or to explain or defend the agency position taken on emergency designation issues or anticipated policy changes.

9. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters have interrelated application or mutual concern.

07 02 02 0003 Farmer Programs Loan Making Division

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to plan, organize, direct, and control the Loan Making function of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures for administering the direct and guaranteed FmHA farm loan making programs.

2. Conducts state-wide farmer loan program evaluations to ensure that program operations are being effectively carried out as planned and are consistent with National and State loan making policies and procedures and professional agricultural financial and production management methods and techniques. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective actions to be taken. Follows up with field offices to assure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notices and amendments for issuance to field organizations.

4. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on the Farmer Programs loan making program operations.

5. Provides technical advice and assistance to National, State and local FmHA employees.

6. Reviews, analyzes, and recommends action to be taken on loan making cases requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss loan making requirements in general or to explain or defend the agency position taken on loan making issues or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 02 0004 Farmer Programs Loan Servicing And Property Management Division

Assignment of Functions

Responsible to the Assistant Administrator Farmer Programs to plan, organize, direct, and control the Loan Servicing and Property Management function of Farmer Programs, FmHA, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures for administering the direct and guaranteed FmHA farm loan servicing and property management programs.

2. Conducts nationwide and state-wide farmer loan program evaluations to ensure that program operations are being effectively carried out as planned and are consistent with National and State loan servicing and property management policies and procedures and professional agricultural financial and production management methods and techniques. Identifies program weaknesses, makes recommendations for improvements in operating efficiency and identifies corrective actions to be taken. Follows up with field offices to ensure accomplishment of corrective action.

3. Incorporates policy issuances into existing procedures. Prepares notice and amendments for issuance to field organizations.

4. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on Farmer Programs loan servicing and property management program operations.

5. Provides technical advice and assistance to National, State and local FmHA employees.

6. Reviews, analyzes, and recommends action to be taken on loan servicing and property management cases requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss program requirements in general or to explain or defend the agency position taken on loan servicing and property management issues or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 03 Assistant Administrator—Community and Business Programs

Assignment of Functions

Is responsible to the Deputy Administrator for Program Operations to plan, organize, direct, and control the Agency's Community and Business Programs. As such:

1. Develops and institutes plans, procedures, and policies for the effective, efficient, and orderly management of Community and Business Programs responsibilities; provides leadership to ensure execution of policies and procedures by the Business and Industry Division, Water and Waste Division, Community Facilities Division, and support functions, and performs other activities as the Administrator or Deputy Administrator may prescribe from time to time.

2. Oversees administration and management of a broad and complex range of Community and Business and Industry type programs including water and waste disposal loans and grants, technical assistance and training grants, community facility loans, industrial development grants, watershed and flood prevention loans, resource conservation and development loans, recreation loan servicing, energy impact

assistance grants, nonprofit National Corporation loans and grants, irrigation and drainage loans, Grazing Association loans, Indian tribal acquisition loans, unincorporated EO cooperative loans, shift in land use loans, Timber Development Organization loans, area development assistance planning grants, rural development loan fund loans, incorporated EO cooperative loans, and business and industrial loans.

3. Monitors, inspects, and evaluates the administration of loan and grant programs as executed by FmHA field personnel on a nationwide basis; analyzes problems and takes action to implement corrective measures; develops and manages an equitable system of allocation of loan funds to states.

4. Develops and initiates action to implement cost reduction techniques for nationwide application in operation of loan programs; coordinates implementation of the debt management program and Presidential and Departmental directives to reduce loan losses as they apply to assigned programs.

5. Develops priorities for assisting Community and Business Programs loan applicants and borrowers in the areas of supervision and planning, security servicing, collection of accounts, property management, loan making and other related aspects; develops and implements procedures that will preserve and strengthen the development of rural America; ensures that borrower graduation policies are adhered to by field personnel.

6. Directs the preparation of budget estimates and projections for program operations; directs the drafting of legislation and legislative reports involving the community and business loan programs.

7. Develops, monitors, and evaluates contracts for community and business activities. Recommends action on use of contracts to achieve effective program administration.

8. Maintains liaison and working relationship with key officials of the agency and institutions such as bankers, and investment groups; collaborates with the Secretary's Office, officials of other agencies, professional societies, and others, on matters of mutual concern; consults with and informs State and local Government officials on program matters; confers and works with the Office of the General Counsel, Office of the Inspector General, Office of Management and Budget, General Accounting Office, and others on program issues and matters of mutual concern; represents the Agency on Departmental, interdepartmental, and interagency task forces for developing public policy for improving services to the public.

07 02 03 0001 Water And Waste Division

Assignment of Functions

Responsible to the Assistant Administrator Community and Business Programs to plan, organize, lead, and direct the Water and Waste Division of Community and Business Programs, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures necessary for the efficient and orderly management of a nationwide program of water and waste disposal loans and grants and technical assistance and training grants in rural areas.

2. Oversees nationwide authority of FmHA to make loans and/or grants for development of new water and waste disposal systems or needed improvements to existing facilities and technical assistance and training grants to private nonprofit corporations. Develops and maintains regulations directing the processing, approving, and servicing of loans and grants. Reviews large unusually complex loan dockets and rejects or concurs with State Office recommendation for approval, or for liquidations or other servicing actions. Maintains knowledge of the statutes authorizing the respective programs and drafts proposed legislative revisions. Maintains knowledge of social, economic, and credit conditions in rural areas.

3. Participants in the planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

4. Provides technical advice and assistance to National, State and local FmHA employees.

5. Reviews, analyzes, and recommends action to be taken on loan dockets requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss water and waste disposal requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 03 0002 Community Facilities Division

Assignment of Functions

Responsible to the Assistant Administrator Community and Business Programs to plan, organize, lead, and direct the Community Facilities Division of Community and Business Programs, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures necessary for the efficient and orderly management of a nationwide progam of community facilities loans, industrial development grants, recreation loans, watershed and flood prevention loans, energy assistance impact grants, resource conservation and development loans, nonprofit National Corporation loans and grants, irrigation and drainage loans, Grazing Association loans, Indian tribal acquisition loans, unincorporated EO cooperative loans, shift in land use loans, Timber Development Organization loans, area development assistance planning grants.

2. Oversees nationwide authority of FmHA to make and service assigned loans and grants. Develops and maintains regulations directing the processing, approving, and servicing of loans and grants. Reviews large or unusually complex loan dockets and rejects or concurs with State Office recommendation for approval, or for liquidations or other servicing actions. Maintains knowledge of the statutes authorizing the respective programs and drafts proposed legislative revisions and of social, economic, and credit conditions in rural areas.

3. Participates in planning, developing, implementing, and conducting training programs for State and local FmHA employees on assigned programs.

4. Provides technical advice and assistance to National, State and local FmHA employees.

5. Reviews, analyzes, and recommends action to be taken on loan dockets requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

6. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss water and community facilities requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes, and to assist with development of interagency agreements.

7. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 02 03 0003 Business and Industry Division

Assignment of Functions

Responsible to the Assistant Administrator Community and Business Programs to plan, organize, lead, and direct the Business and Industry Division of Community and Business Programs, and to perform such other activities as the Assistant Administrator may prescribe from time to time.

1. Implements current and long range plans, policies, and procedures necessary for the efficient and orderly management of a nationwide program of business and industry loans and grants.

2. Oversees nationwide authority of FmHA to make and service assigned loans and grants. Develops and maintains regulations directing the processing, approving, and servicing of loans and grants. Reviews large or unusually complex loan dockets and rejects or concurs with State Office recommendations for approval, or for liquidations or other servicing actions. Maintains knowledge of the statutes authorizing the respective programs and drafts proposed legislative revisions. Works with lenders, financial consultants, and

corporate executives in structuring and developing commercial loan packages.

3. Administers a loan portfolio consisting of 38 Rural Development Fund (RDLF) loans that were transferred from the Department of Health and Human Services on June 9, 1986. These RDLF loans were made in 21 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Administers Incorporates Economic Opportunity Loans.

4. Participates in the planning, development, implementation, and conducting training programs for State and local FmHA employees on assigned programs.

5. Provides technical advice and assistance to National, State and local FmHA employees.

6. Reviews, analyzes, and recommends action to be taken on loan dockets requiring prior clearance of the National Office. Resolves, or recommends the disposition of problem cases submitted for technical review and approval by higher authority.

7. As a representative of the Administrator, meets with Members of Congress, high level officials of other Federal and State agencies, special interest groups and the general public, to discuss business and industry requirements in general or to explain or defend the agency position taken on loans and grants or anticipated policy changes.

8. Works closely with other program divisions and staffs, OIG, OGC, and with key officials on various phases of work, operating problems, individual problems, individual cases, and procedural and other matters having interrelated application or mutual concern.

07 06 Deputy Administrator for Management

Assignment of Functions

Responsible to the Administrator or Associate Administrator for the formulation of policy for the Agency in all areas of support services for the Agency's programs, and performs such other activities as the Administrator may prescribe from time to time.

1. Provides overall supervision and direction the Agency's staff support activities including administrative planning, accounting, budgeting, personnel, systems development, use of ADP, administrative services, information resources management, organization, financial matters, and management improvement.

2. Directs and supervises subordinate organizational activities consisting of the Assistant Administrator for Automated Information Services; the Assistant Administrator, Finance Office; the Assistant Administrator for Administration; the Budget Staff; and the Financial and Management Analysis Staff.

3. Maintains liaison and working relationship with the Department's Management Council; works with the Assistant Secretary for Administration and associated staff offices, the Office of Budget and Program Analysis, the Office of Management and Budget, the Office of Personnel Management, General Services Administration, the Department of Treasury, Congressional staffs, and others as necessary to carry out assigned responsibilities.

07 06 00 0001 Financial and Management Analysis Staff

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for debt management initiatives, cash management initiatives, management analysis, and for management, financial, and productivity improvement programs, and such other activities as the Deputy Administrator may prescribe from time to time.

1. Develops and manages FmHA debt collection efforts, including compliance with the Debt Collection Act. Monitors FmHA debt management systems to assess effectiveness and impact. Develops and manages FmHA's program for offsetting salary of Federal employees who are delinquent on FmHA loans. Initiates pilots or tests of new or innovative methods, techniques, and processes in debt management.

2. Develops and manages FmHA cash management initiatives. Monitors FmHA cash management systems to assess effectiveness and impact. Initiates pilots or tests of new and innovative methods, techniques and processes in cash management.

3. Responsible for FmHA's management analysis function. Initiates and performs all types of management improvement, productivity improvement, efficiency, and effectiveness studies and analyses. Serves as an in-house consultant and troubleshooter for management problems and concerns.

4. Responsible for FmHA's implementation of OMB Circulars A–76, A–70, and A–129, and for other management, financial, and productivity improvement programs, including Presidential management initiatives.

5. Maintains liaison and working relationship with the USDA Financial Council, the Office of Management Reform, Office of Finance and Management (OFM), OMB, Department of Treasury, and other appropriate Federal Agencies and private sector establishments that impact on or have an interest in the assigned program areas.

07 06 00 0002 Budget Staff

Assignment of Functions

Responsible to the Administrator and Deputy Administrator for Management for FmHA's budget, travel, borrowing, and interest rate management, and for such other activities as the Deputy Administrator may prescribe from time to time.

1. Develops plans and procedures for the formulation, presentation, and execution of the total FmHA budget; on the basis of financial and budgetary planning, assists the Deputy Administrator and program officials in support of decision-making activities and establishment of policy necessary for efficient and effective management of FmHA programs. Recommends reprogramming and policy changes to meet FmHA goals and objectives; recommends budgetary levels, budget strategy and program implementation.

2. Provides leadership and direction for planning, formulation, justification, presentation, execution, control and review of the total FmHA budget effort. Prepares FmHA budget estimates in order to develop the FmHA budget submission to the Secretary's Office, OMB, and Congress. Establishes and maintains control over program and administrative funds to assure compliance with Agency policy, approved apportionments, Congressional interest and applicable laws and regulations.

3. Maintains liaison and working relationship with program and administrative officials, FmHA State Directors and other field personnel. Participates in State meetings, conferences and other sessions and gives advice and counsel on budget operations and operating levels. Serves as FmHA liaison for budget and financial programs with Congressional Committees and staff, OMB, GAO, the Secretary's office, OGC, OIG, and other USDA agencies, Department of Treasury, Department of Housing and Urban Development (HUD), and other agencies, news reporters, public and private interest groups and the general public.

4. Responsible for the total Agency budget effort from planning and formulation to execution control and review. Reviews and recommends changes in operating levels for personnel, travel, overtime, contracts, and other reprogramming of funds.

5. Responsible for travel procedures in FmHA. Develops and recommends travel policies, prepares travel regulations, and reviews and evaluates travel programs of FmHA. Administers the Diners Club travel card program, use of travel agencies, and the employee relocation service.

6. Responsible for revolving fund analysis related to cash forecasting, timing of sale of notes inventory, Treasury borrowings, outlay planning and analysis, and management of FmHA interest rates and interest projections.

07 06 01 Assistant Administrator—Finance Office

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for the development of policies that affect the operation of the accounting system, and for such other activities as the Deputy Administrator may prescribe from time to time.

1. Manages the day-to-day operation of the accounting system, including system maintenance. Prepares all financial reports required by management and for the FmHA budget based on data in the accounting system. Maintains the supplies warehouse and meets the needs of field offices for equipment and supplies within funds available for the purpose and under the general direction of the Administrative Services Division. Maintains necessary obligation and related funds control.

2. Directs and supervises subordinate organizational activity consisting of the Fiscal and Accounting, Operations, and Administrative Support functions of the Finance Office.

3. Maintains liaison and working relationship with the Department data

processing manage to provide Automated Data Processing support for the accounting operation, and with GAO on audit matters relating to the accounting system.

4. Prepares Finance Office budget plans. Monitors and controls approved budgets including authorized personnel staffing.

5. Administers the overall Departmental excess personal property coordination functions for disposal of personal property outside the Washington, DC area, the object of which is to effect reutilization or disposal of personal property Departmentwide. Maintains liaison with Departmental staff offices and agencies, GSA, and state and local governments.

07 06 03 Assistant Administrator For Administration

Assignment of Functions

Responsible to the Administrator and the Deputy Administrator for Management for the overall management of the FmHA personnel, organization, and administrative services policies, and for performing such other activities as the Deputy Administrator may prescribe from time to time.

1. Provides executive leadership, formulates and coordinates policies, and provides direction in carrying out assigned programs to subordinate organizational activities consisting of the Personnel Division and Administrative Services Division.

2. Develops procedures for and carries out a personnel program for FmHA, including recruitment, evaluation, classification, employee relations, position management, training, career development and grievance appeals. Analyzes and reviews organizational relationships and makes recommendations on changes.

3. Establishes and maintains a directives system for FmHA to cover the clearance, approval and maintenance of formal regulations, administrative notices, and procedural announcements.

4. Provides for FmHA space analysis and review services, forms management activities, mail management, communications system operations, printing and reproduction requirements, property management, contracting programs and records management.

5. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

6. Develops a budget for the training program for FmHA within overall budget constraints. Provides major input to the administrative budget for FmHA and coordinates that budget with the responsibilities of the Finance Office.

07 06 03 0001 Personnel Division

Assignment of Functions

Responsible to the Assistant Administrator for Administration for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the FmHA nationwide personnel management, organizational management, and training programs, and conducts such other activities as the Assistant Administrator may prescribe from time to time.

1. Plans, develops, and implements programs and activities related to employment, placement, merit promotion, organization, position management, position classification, performance appraisal, incentive awards, employee recognition, employee and labor management relations (including adverse action, conduct, discipline, grievances, and appeals), employee compensation and benefits, employee safety and health, training and career development.

2. Provides direct operating services involving personnel management and training for employees of the National Office, and those operating services which have not been specifically delegated to State Offices and the Finance Office for employees in the field. Provides technical direction, oversight, and guidance to State Offices and the Finance Office on organization, personnel management, and training programs and activities conducted at the field level. Maintains and administers or directly oversees at the field level, FmHA and USDA personnel and training information systems (including ADP based systems), procedures and personnel action processing operations.

3. Monitors and evaluates the effectiveness of assigned programs at all levels of the Agency and recommends improvements. Collects and analyzes data, conducts organizational, occupational, and other staff studies on personnel management and training issues, identifies the need for program changes, operations/processing systems and procedures, and develops options and recommendations for management decision.

4. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 03 0003 Administrative Services Division

Assignment of Functions

Responsible to the Assistant Administrator for Administration for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the FmHA directives systems and the provision of administrative services to the Agency, including implementation of the Freedom of Information and Privacy Acts, and conducts such other activities as the Assistant Administrator may prescribe from time to time.

1. Reviews all Agency directives issuances and public participation functions, including publication of regulations and legal notices in the Federal Register. Coordinates real and personal property, space, procurement, printing, reproduction control, communications and mail management, forms, record retention and disposition and tort claims activities. Coordinates National Office review of requests under Freedom of Information Act and provides technical advice as to matters covered by the Privacy Act.

2. Maintains liaison and working relationship with other USDA agency Administrative Services Divisions and participates in the Department Administrative Services Administration and Office of Managment and Budget. Provides policy direction and serves as liaison with the Administrative Support Division in the Finance Office.

3. Prepares substantial input to administrative budget plans as required and administers administrative budgets within administrative responsibilities.

07 06 04 Assistant Administrator for Automated Information Systems

Assignment of Functions

Responsible to the Deputy Administrator for Management for the development, implementation, and evaluation of plans, policies, and procedures necessary for the efficient and orderly management of the information resources management functions of FmHA, for identifying and applying ADP and other systems technology, and conducting such other activities as the Assistant Administrator may prescribe from time to time.

1. Directs and supervises subordinate organizational activity consisting of the Financial Systems Division, Management Systems Division, Accounting System Planning Division, and the Information Resources Management Division.

2. Identifies financial and management information needs, and initiates actions to capture and report such information. Provides the policies, procedures systems and ADP technology necessary to implement new and enhanced systems for the Agency by designing, gathering data for the initiating reports of management information. Determines and manages the ADP software and hardware needed to serve the Agency most effectively and efficiently.

3. Maintains liaison and working relationship with the USDA Office of Information Resources management. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 04 0001 Financial Systems Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Systems for the development, implementation, and evaluation of plans, policies, and procedures necessary for the development of new ADP systems applications projects needed to support program policy implementation, and performs

such other activities as the Assistant Administrator may prescribe from time to time.

1. Develops ADP systems applications to support policy implementation for loan making, loan servicing, cash and debt management, and program accounting activities for the Agency, including modifications to the existing financial systems.

2. Assures automated modifications are consistent with regulatory requirements, changes in law and changes in technology, and are structured to provide maximum efficiency and effectiveness of Agency operations.

3. Designs, develops, and tests new program financial systems and modifications to existing program financial systems.

4. Provides the centralized data base administration function for the Agency and provides technical support necessary to ensure user availability of the FmHA nationwide network of terminal and microprocessors.

5. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others and collaborates on matters of mutual concern. Represents the Agency on departmental interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 04 0002 Management Systems Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Services for the development of policies, methods, procedures, and strategies for Automated Data Processing (ADP) support systems for non-financial administrative and program systems and for office automation, and such other related activities as the Assistant Administrator may prescribe from time to time.

1. Designs, develops, tests, implements, documents, maintains, monitors, and supports agencywide automated management systems. Provides agency managers and their employees with data and tools to enable them to achieve program and administrative goals. Provides technical service and support to agency managers relating to requirements analysis, systems design, software and documentation development, system testing, and systems implementation, monitoring and control.

2. Cooperates with program managers by evaluating and analyzing the utilization of and data generated by such automated systems to identify problem areas and recommend solutions. Provides technical advice and support to FmHA managers relating to requirements analysis, systems design, software and documentation development, system testing and systems implementation, monitoring and control.

3. In cooperation with administrative and program managers oversees the planning, design, development and implementation of administrative, management and office automation systems utilizing contractor and government resources. Provides ADP technical and timesharing support to FmHA personnel.

4. Manages equipment and services contracts and special projects which require delicate coordination among private and public entities (including other Federal organizations) with a view of more uniform coordination and administration of complex Federal automation system.

5. Provides ADP procurement support for equipment and software agencywide. Monitors performance of contractors, making recommendations regarding contract modifications and approval or rejection of contractor products. Negotiates with contractors, USDA Office of Information Resources Management and other USDA agencies regarding areas of unsatisfactory contractor or product performance to arrive at mutually agreeable solutions.

6. Analyzes and recommends new, revised or alternative automation products and management systems. Recommends and justifies major expenditures of FmHA funds for ADP equipment, software and contractor assistance.

7. Provides long-range strategic ADP planning on management systems and office automation.

8. Maintains liaison and effective working relationships with FmHA program and administrative personnel, Departmental staff offices and other Federal and professional ADP organizations as necessary to perform assigned responsibilities.

07 06 04 0003 Accounting Systems Planning Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Systems for the development, implementation, and evaluation of plans, policies, and procedures necessary for the development of functional specifications related to the design and development of new or modified automated accounting systems projects, and performs such other activities as the Assistant Administrator may prescribe from time to time.

1. Establishes plans and develops functional specifications for new accounting systems and modifications to existing accounting systems for the Agency which support the regulatory and policy agenda of the Agency in the areas of loan making and loan servicing.

2. Coordinates the establishment of priorities for implementing proposed accounting systems and enhancements to existing automated systems.

3. Develops and carries out the formulation of alternative development configurations in support of accounting system efforts and directs cost-benefit analyses of several such ADP configurations which could be adopted by the Agency.

4. Maintains liaison and working relationship with key officials of the agency, the Department of Agriculture, the Departmental Office of Personnel, officials of other Federal agencies, and others, and collaborates on matters of mutual concern. Represents the Agency on departmental, interdepartmental, and interagency task forces on matters affecting assigned programs.

07 06 04 0004 Information Resources Management Division

Assignment of Functions

Responsible to the Assistant Administrator for Automated Information Systems for the development, implementation, and evaluation of plans, policies, and procedures necessary for ensuring that all Departmental Information Resources Management regulations, and other Federal IRM-related regulations are complied with within the agency, and for performing such other activities as the Assistant Administrator may prescribe from time to time.

1. Develops policies, agency regulations, standards and guidelines for all program activities. Coordinates and serves as liaison with other Federal organizations, inside and outside of the agency, concerning program policies, OMB circulars, GSA regulations and other regulations to perform assigned functions.

2. Manages the long range planning process and IRM budget development for FmHA, including development of the annual plan for submission to the Department of Agriculture. Provides policies, procedures, and coordination of the IRM Review Boards. Develops and maintains FmHA telecommunications policies.

3. Provides the data administration function, including controlling of reports, inventories, standards, and electronic information holdings reviews. Develops and maintains FmHA reports management policy and procedures. Administers the weekly and monthly production of a variety of program reports.

4. Provides a focal point and coordination for FmHA participation in USDA cooperative processing initiatives and information sharing initiatives. Provides the single point of contact with USDA for all technical approval requests, IRM Standards and IRM Reviews.

5. Provides the liaison function between the National Office and the Finance Office for review and clearance of FmHA regulations, policies, and procedures.

Dated: May 9, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88-12440 Filed 6-1-88; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 88-005F]

Termination of Designation of the State of Montana With Respect to the Inspection of Meat and Poultry Products and Special Purposes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule and termination of designation.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations by terminating the designation of the State of Montana under Titles I, II, and IV of the Federal Meat Inspection Act and sections 1–4, 6–11 and 12–22 of the Poultry Products Inspection Act.

DATES: This notice of termination of designation is effective June 6, 1988. The effective date of this amendment is June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald R. Snyder, Director, Federal-State Relations (202) 447–6313 or Mr. Robert W. Gonter, Assistant Deputy Administrator, Compliance Program (202) 447–7745, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC. 20250.

SUPPLEMENTARY INFORMATION: .

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Terminating the designation of the State of Montana will provide for the State to assume the responsibility, previously held by the Federal Government, of administering the meat and poultry inspection program for intrastate operations and transactions and for ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. The State of Montana will be required to administer the inspection program in a manner that is at least equal to administration by the Federal Government.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). As stated above, the State of Montana is assuming the responsibility, previously held by the Federal Government, of administering the meat and poultry inspection program for intrastate meat and poultry operations and transactions. No additional requirements are being imposed on small entities.

Background

Section 301(c) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 661(c)) and section 5(c) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 454(c)) authorize the Secretary of Agriculture to designate a State as one in which the provisions of Titles I and IV of the FMIA and sections 1–4, 6–10, and 12–22 of the PPIA shall apply to operations and transactions wholly within the State after he has determined that requirements at least equal to those imposed under the Acts have not been developed and effectively enforced by the State.

On December 2, 1970 (35 FR 13895) and March 27, 1971 (36 FR 5794), notices were published in the **Federal Register** announcing that the Secretary of Agriculture was designating the State of Montana, under paragraph 5(c) (21 U.S.C. 454(c)) of the PPIA and paragraph 301(c) (21 U.S.C. 661(c)) of the FMIA respectively, as a State in which the Federal Government is responsible for providing meat and poultry inspection at eligible establishments and for otherwise enforcing the applicable provisions of the PPIA and FMIA with respect to intrastate activities in the State.

In addition, on January 31, 1975 (40 FR 4646), a notice was published in the **Federal Register** announcing that, effective on that date, the Federal Government would assume the responsibility of administering the authorities provided for under sections 202, 203, and 204 (21 U.S.C. 642, 643, 644) of the FMIA and sections 11 (b) and (c) (21 U.S.C. 460 (b) and (c)) of the PPIA regarding certain categories of processors of meat and poultry products.

The aforementioned designations were undertaken by the Department when it was determined that the State of Montana was not in a position to enforce inspection requirements under State laws for product in intrastate commerce that are at least "equal to" the requirements of the FMIA and PPIA enforced by the Federal Government.

The Governor of the State of Montana has advised this Department that effective June 6, 1988, the State of Montana will be in a position to administer a State meat and poultry inspection program which includes requirements at least "equal to" those imposed under the Federal meat and poultry inspection program for products in interstate commerce.

Section 301(c)(3) of the FMIA and Section 5(c)(3) of the PPIA provide that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State meat and poultry inspection requirements at least "equal to" those imposed by the Federal Government under the FMIA and PPIA, with respect to intrastate operations and transactions within the State, he shall terminate the designation of such State. The Secretary has determined that the State of Montana has developed and will enforce such a State meat and poultry inspection program in accordance with the said provisions of the FMIA and PPIA. In addition, the Secretary has determined that the State of Montana is also in a position to enforce effectively the provisions of sections 202, 203, and 204 of the FMIA and section 11(b), (c), and (d) of the PPIA. Therefore, the designations of the State of Montana under Titles I, II and IV of the FMIA and sections 1–4, 6–11, and 12–22 of the PPIA are hereby terminated.

List of Subjects in 9 CFR Parts 331 and 381

Meat inspection, Poultry and poultry products.

Accordingly, Part 331 of the Federal meat inspection regulations (9 CFR Part 331) is amended to read as follows:

PART 331—[AMENDED]

1. The authority citation for Part 331 continues to read as follows:

Authority: Secs. 21 and 301, 81 Stat. 584, 588, 592, 593, 595 (21 U.S.C. 621, 661).

§ 331.2 [Amended]

2. The Table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is hereby amended by deleting "Montana" from the "State" column and by deleting the date which was added on the line with Montana.

3. The authority citation for § 331.6 is revised to read as follows:

Authority: Secs. 21 and 205, 34 Stat. 1260, as amended; 81 Stat. 584 (21 U.S.C. 621, 645).

§ 331.6 [Amended]

4. Section 331.6 of the Federal meat inspection regulations (9 CFR 331.6) is hereby amended by deleting "Montana" from the "State" column in all three places and by deleting the dates which were added on the lines with Montana in all three places.

Further, Part 381 of the poultry products inspection regulations (9 CFR 381) is revised as following:

PART 381—[AMENDED]

1. The authority citation for § 381.221 continues to read as follows:

Authority: Secs. 5(c) and 14, 71 Stat. 441, as amended (21 U.S.C. 454(c), 463).

§ 331.221 [Amended]

2. Section 381.221 (9 CFR 381.221) is hereby amended by deleting "Montana" from the "State" column and by deleting the date which was added on the line with Montana.

3. The authority citation for § 381.224 continues to read as follows:

Authority: Secs. 11(e) and 14, 71 Stat. 441, as amended, 82 Stat. 791, 21 U.S.C. 460(e), 463.

§ 381.224 [Amended]

4. Section 381.224 (9 CFR 381.224) is hereby amended by deleting "Montana" from the "State" column in both places and by deleting the dates which were added on the lines with "Montana" in both places.

These amendments of the Federal meat and poultry products inspection regulations are necessary to reflect the determination of the Secretary of Agriculture under sections 205 and 301 (c)(3) of the Federal Meat Inspection Act and sections 5(c)(3) and 11(e) of the Poultry Products Inspection Act. Further, it does not appear that public participation in this matter would make additional relevant information available to the Secretary. As mentioned above, the Governor of the State of Montana has determined that the State of Montana will be in a position to administer a State meat and poultry inspection program with requirements at least "equal to" those imposed under the Federal meat and poultry inspection program beginning June 6, 1988. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary, and good cause is found for making the amendments effective less than 30 days after publication in the **Federal Register.**

Done at Washington, DC, on May 13, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-12264 Filed 6-1-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-15; Amdt. 39-5915]

Airworthiness Directives; GROB-WERKE GmbH & Co. KG (Burkhart Grob) Model G103 Twin Series Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Grob-Werke GmbH G103 TWIN SERIES gliders which requires a visual inspection and relocation of the aft tow-hook knob. This action was prompted by the determination that the knob can fall from vibrational loads into the control system. This condition, if not corrected, could result in the loss of glider control.

DATES: Effective—June 9, 1988.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of June 9, 1988.

ADDRESSES: The technical information and modification parts specified in this AD may be obtained from Grob Systems, Inc., Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817.

A copy of the service bulletin is contained in the Rules Docket, Docket Number 88-ANE-15, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts, 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium, Telephone 513.38.30 ext. 2710, or Mr. C. Kallis, ANE-173, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6428.

SUPPLEMENTARY INFORMATION: Grob-Werke GmbH has determined that wear may develop in the aft tow-hook knob and create a potential danger, if this knob falls into the control stick boot during flight. The manufacturer has issued technical information contained in Service Bulletin (SB) TM 315-32, dated June 12, 1987, which requires inspection and possible relocation of this knob if the existing location is at a position where it can fall into the controls. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of SB TM 315-32, on gliders operated under the Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Grob SB TM 315-32 and the issuance of Airworthiness Directive No. 87-140 Grob by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Grob SB TM 315-32 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Applicability information was provided because not all aircraft serial numbers of the named models were affected by the AD.

Therefore, an AD is being issued to require a visual inspection and relocation of the aft tow-hook knob, if it is located at the position where it can fall into the controls.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The regulation set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under

DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Air transportion, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

GROB WERKE GmbH and Co. KG (Burkhart Grob): Applies to the following models certificated in any category:

G103 TWIN ASTIR, Serial Numbers 3000 through 3291.

G103 TWIN II, Serial Numbers 3501 through 3878.

G103A TWIN II ACRO, Serial Numbers 3501 through 3878 with Supplement "K" in the number.

Compliance is required as indicated, unless already accomplished.

To prevent the tow-hook knob from dropping into the control stick boot during flight and obstructing control stick movement, accomplish the following:

(a) If the guide-sleeve cutout is located at the bottom left hand (LH) corner of the instrument panel, as shown in Fig. 1 and Fig. 2 of Grob Service Bulletin (SB) TM 315-32, within the next 10 hours time-in-service after the effective date of this AD, visually inspect the aft tow-hook knob in the area of the guide sleeve for wear, cracks or looseness of the tow-hook knob.

(b) If wear, cracked sleeve or losseness is determined, before further flight, unless already accomplished, relocate the position of the tow-hook knob in accordance with Instruction 2 in Grob SB TM 315-32, dated June 12, 1987.

(c) If the inspection of (a) determines that no wear, crack or looseness of any part in the tow-hook knob exist, accomplish the relocation of the knob as indicated in (b) within the next 20 hours time-in-service after the effective date of this AD.

(d) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium, Telephone No. 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6680.

(e) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Grob SB TM 315-32, dated June 12, 1987, including Repair Instructions No. 315.32, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Grob Systems, Inc., Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 88-ANE-15, between the hours of 8:00 a.m. and 4:30 p.m., Monday thru Friday, except Federal holidays.

This amendment becomes effective on June 9, 1988.

Issued in Burlington, Massachusetts on April 28, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88-12313 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-7]

Transition Area Alteration; Alliance, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to reflect the name change of Miller Airport, Alliance, OH, to Berlin Airpark Airport, Alliance, OH and an update to the airport coordinates. This action involves no other changes.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will alter the Alliance, OH, transition area by changing the airport name from Miller Airport to Berlin Airpack Airport where it appears in the transition area description. The adjustment of coordinates is from lat. 40°59'00" N., long. 81°02'30" W. to lat. 40°59'05" N., long. 81°02'32" W.

The alterations will affect only the published description and will cause no change to aeronautical operations as currently conducted or to the general configuration of the airspace.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore -(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Alliance, OH [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Berlin Airpack Airport, Alliance, Ohio (lat. 40°59'05" N., long. 81°02'32" W.), and within a 5.5 mile radius of Tri-City Airport, Sebring, Ohio (lat. 40°54'22" N., long. 81°00'02" W.).

Issued in Des Plaines, Illinois, on May 20, 1988.

John H. Bacon,

Acting Manager, Air Traffic Division.

[FR Doc. 88–12314 Filed 6–1–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 25593; Amdt. No. 343]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: The FAA published an Amendment in Docket No. 25593, Amdt. No. 343 to Part 95 of the Federal Aviation Regulations (53 FR 83 15364; April 29, 1988). In that amendment, a typographical error listed the effective date incorrectly. This action corrects that error and changes the effective date to May 5, 1988.

EFFECTIVE DATE: May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on May 20, 1988.

Robert L. Goodrich,

Director of Flight Standards.

[FR Doc. 88–12312 Filed 6–1–88; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3390-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to Syntex Agribusiness, Inc., for certain solid wastes to be generated at the Denney Farm site in McDowell, Missouri by the EPA Mobile Incineration System. This action responds to a delisting petition received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: June 2, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (Sub-basement), Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–88–SSEF–FFFFF." The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Syntex Agribusiness, Inc. (Syntex), located in Springfield, Missouri, petitioned the Agency to exclude from hazardous waste control certain waste it intends to generate. After evaluating the

petition, on September 3, 1987, EPA proposed to exclude Syntex's waste from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32, conditional upon Syntex meeting certain monitoring, sampling, and analysis requirements (see 52 FR 33439). Syntex's petition was for an "upfront" exclusion. A petitioner may request an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. An upfront delisting petition (when treatment is planned) allows an exclusion to be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. The exclusion would include batch testing requirements, such as analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may specify verification testing limitations (i.e., the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion; when the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

C. Other Related Exclusions

Today's exclusion represents the third exclusion related to EPA's Mobile Incineration System. The first exclusion was granted to EPA's Releases Control Branch (RCB) on July 25, 1985 (see 50 FR 30271). That exclusion covered the residues from the incineration of several categories of liquid wastes from dioxin-decontamination activities at the Syntex facility in Verona, Missouri, as well as various related contaminated solids. That exclusion was a conventional exclusion (in contrast with Syntex's upfront exclusion granted in today's rulemaking) which was based on the evaluation of residues from the MIS's trial burn demonstration.

The second exclusion for residues from the MIS was granted to RCB on March 11, 1988 (see 53 FR 7903) for residues from the incineration of dioxin-contaminated cancellation pesticides (i.e., 2,4,5–T and Silvex). That exclusion was an upfront exclusion which was based on RCB's characterization of the untreated pesticides and identification of potential products of incomplete combustion. The March 11, 1988 exclusion was made conditional upon specific monitoring, sampling, and analysis requirements which were designed to confirm that the residues are non-hazardous.

II. Disposition of Petition

A. Syntex Agribusiness, Inc.

1. Proposed Exclusion

Syntex petitioned the Agency for an upfront exclusion from EPA Hazardous Waste No. F020 of incineration residues from the treatment of wastewater treatment sludge, previously held in a lagoon at Syntex's Springfield, Missouri facility, in the EPA Mobile Incineration System (MIS). Syntex based its petition on the expected low concentrations of the listed constituents in the incineration residues. In the proposed rule, the Agency concluded that data submitted by Syntex, in conjunction with the verification testing conditions which the Agency proposed to require as part of a final exclusion, substantiated Syntex's claim that the listed constituents of concern would not be present in the incineration residues at or above levels of regulatory concern. Furthermore, Syntex submitted data on other non-listed hazardous constituents expected to be present in the sludge and potentially present in the incineration residues as products of incomplete combustion. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the incineration residues at or above levels of regulatory concern. See 52 FR 33439, September 3, 1987, for a more detailed explanation of why EPA proposed to grant Syntex's petition for these incineration residues.

2. Agency Response to Public Comments

General. The Agency received public comments on the proposed rule from six different interested parties. The commenters were generally in favor of the Agency's proposed decision to exclude the incineration residues from the treatment of Syntex's lagoon sludge. As will be discussed in more detail below, several commenters submitted detailed comments arguing that the proposed testing requirements and accompanying delisting levels were too conservative.

Several commenters stated that the conditions of the proposed exclusion were so conservative that the impact of the exclusion would be to discourage future incineration of similar dioxin-contaminated materials, despite clear Congressional preference for permanent treatment of hazardous waste. The Agency strongly disagrees. EPA believes that the successful incineration of the lagoon sludge and upfront exclusion of the resultant incineration residues will encourage an otherwise reluctant commercial hazardous waste management industry to step into the dioxin management business. EPA also believes that the conservative approach to the exclusion of these materials demonstrates a commitment to meeting statutory requirements to ensure protection of human health and environmental safety while encouraging permanent treatment solutions.

Two commenters stated that the proposed low delisting levels for certain organics, particularly dioxin, would require the MIS to operate with extended residence times to ensure destruction of these constitutents to the delisting levels. The commenters believed that this is unnecessary and will (1) effectively reduce the capacity of the MIS, (2) significantly increase operating costs, and (3) deter future thermal treatment of hazardous wastes. One commenter questioned whether the MIS would be able to achieve the low delisting levels for dioxin when operating at capacity. One commenter also questioned whether the Agency could justify imposing higher operating costs when health-based standards for dioxin are uncertain.

The Agency acknowledges that effective hazardous waste treatment and detoxification can be quite expensive and time-consuming. The Agency also recognizes that its conservative approach to protecting human health and the environment may cause increased treatment costs compared with less protective approaches. Notwithstanding, the Agency believes that the availability of upfront exclusions, even with conservative conditions, will encourage such treatment. The Agency also believes that the conservative conditions applicable to today's exclusion are necessary to protect human health and the environment, can be realized by the MIS, will permit treatment of these wastes, and will serve to demonstrate that the MIS can generate non-hazardous residues when incinerating the Syntex lagoon sludge. (Information is in the docket reflecting the 1985 Denney Farm trial burn and process descriptions of the MIS and demonstrating the likely ability of full-scale operations to meet delisting levels.)

Two commenters stated that the Agency failed to provide an adequate opportunity to comment on the proposal. The commenters believed that the administrative record for the proposal was inadequate to evaluate: the conservative assumptions employed and calculations used in deriving health

based numbers and delisting levels; the presence of certain constitutents; and the difference in approach from the 1985 exclusion and other Agency activities. Although EPA believes that the record was and is fully adequate to support the proposal and final action, the Agency has provided in today's rulemaking preamble additional information to address specific concerns raised by this and other commenters. This information includes historical background on the 1985 exclusion for the MIS and on the evolution of the Delisting Program's rulemaking activities and criteria over the past three years. Because many of the health-based levels used to set delisting levels have been published in previous delisting decisions and were available in the docket, and because the Delisting Program's analytical approach and the MIS technology have been subject to extensive public notice and comment and were fully referenced in the notice of proposed rulemaking, the Agency believes that the administrative record was replete with necessary and sufficient information upon which the interested parties could comment. Further, the Agency believes that the proposal, the documents referenced therein, and the background documents contained in the regulatory docket contained adequate information upon which to evaluate the likely presence of constitutents of concern. These documents included the calculations, equations, health-based regulatory levels, and solubilities used to determine the maximum allowable treatment residue concentrations.

One commenter noted that the proposed rule did not indicate where the incineration residues will be disposed. The commenter was concerned that if the residues are disposed of at the Syntex Springfield site, several endangered or threatened species could be impacted and recommended that the Agency coordinate with the Fish and Wildlife Service to determine if impacts to specific fish and wildlife resources could occur. In response to these comments, the Agency notes that the specific disposal sites for the incineration residues were not identified because the disposal scenarios had not been finalized at the time of the proposal. In addition, petitioners are responsible for complying with all relevant federal, state and local regulations. States may also enforce more stringent requirements than the Federal RCRA program, and may choose not to delist listed wastes. Further, petitioners are also independently responsible for complying with any applicable regulations or controls established by the Fish and Wildlife Service regarding endangered species.

The Agency believes, in response to the commenter's specific concern with the potential impact of the petitioned wastes on fish and wildlife, that the environmentally conservative maximum allowable treatment residue concentrations established in today's rule should be protective of the environment, including fish and wildlife. The excluded waste volumes are finite and relatively small, which will minimize any potential impacts. Further, the impact on fish are expected to be virtually nonexistent due to the dilution of the finite volume of wastewater by a fish-bearing stream or river that might receive the waste. The chronic value for 2,3,7,8-TCDD (one of the major constitutents of concern in the petitioned waste) in rainbow trout is $<0.001\mu g/1$ (Ambient Water Quality Criteria for 2,3,7,8-Tetrachlorodibenzo-p-dioxin, U.S. EPA, Office of Water Regulations and Standards, February, 1984) in comparison with the maximum allowable wastewater concentration of 0.002 ppt ($2x19\text{-}6\ \mu g/1$) established in today's rule.

The remainder of this section addresses specific aspects of the proposal on which the Agency received comment, including differences from previous related exclusions, EPA's modeling approach, and specific comments on the proposed conditions. In responding to comments and in considering approaches to and criteria for the proposed and final exclusions, the Agency has kept an open mind and has applied its best, current technical judgment.

a. *Differences from 1985 Exclusion.* One commenter characterized the proposal as "a startling and largely unexplained departure" from the approach used in the original exclusion for the MIS in 1985 (see 50 FR 30272, July 25, 1985). The commenter noted that the materials covered by the 1985 exclusion fall into the same categories of dioxin-contaminated wastes (F020, F022, F023, F026, F027, and F028) and will be processed in the same incinerator as the Syntex waste, yet are subject to different delisting criteria.

The Agency's approach to the evaluation of petitions has evolved since the 1985 exclusion. Since that time, for example, the Agency has adopted the organic leachate model (OLM) as an analytical tool in reviewing delisting petitions (see 51 FR 41084, November 13, 1986). The OLM allows the Agency to evaluate the potential mobility of hazardous organic constituents. In addition, the Agency has implemented the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that the delisting process consider all factor (including additional constituents) which could cause a waste to be hazardous rather than only those factors for which a waste was listed. EPA has also published a guidance manual (see "Petitions to Delist Hazardous Wastes — A Guidance Manual", U.S. EPA, Office of Solid Waste, (EPA/530-SW-003), April 1985) which outlines the information needed in a delisting petition. Further, the recent cancelled pesticides final rule (see 53 FR 7903) and today's final rule are examples of the Agency's current ability to evaluate and to grant "upfront" exclusions.

One of the major differences between the 1985 exclusion and the Syntex proposal is that the Syntex proposal wa: for an "upfront" exclusion; that is, the treatment residues from the incineratior of the Syntex lagoon sludge have not ye been generated and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues for the EP toxic metals and hazardous organic compounds (identified in the petition as potential constituents of concern), including dioxin. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. Because similar data for the Syntex treatment residues do not yet exist, the Agency is requiring as part of this final exclusion extensive verification sampling and analysis of the incineration residues when generated.

A second difference is that the materials to be incinerated in these two cases are different, i.e., contaminated soils and solvents versus wastewater treatment sludge. A comparison of the constituents of concern for the two matrices shows differences in the constituents of concern, as well as varying concentrations of constituents of concern, as well as varying concentrations of constituents common to both matrices. As a result of these inherent differences, the exclusions for the two matrices are slightly different.

The levels of regulatory concern for the metals differ for the two petitions due to application of the vertical and horizontal spread (VHS) model (see 50 FR 48896, November 27, 1985). As discussed in the preamble to Syntex's proposed exclusion, the VHS model results in a scale which suggests that a large volume of waste exhibiting a particular extract level could be considered hazardous, while a smaller

volume of the same waste could be considered non-hazardous (see 52 FR 33441). Because the waste volumes of the two petitions vary, levels of concern for metals in these wastes also vary.

Further discussions of specific differences between the 1985 exclusion and the Syntex proposal, as well as discussions of the differences between the cancelled pesticide final exclusion and the Syntex proposal, are provided later in today's notice in Sections II.A.2.c. ii, iv, and v.

Thus, differences between these actions properly reflect differences in the petitioned wastes and the Agency's evolving technical expertise in assessing the hazards of wastes proposed for exclusions. These differences have been publicly noticed in numerous post-1985 actions that appeared in the **Federal Register** and were fully referenced in the proposal. The Agency believes strongly that it should be able to apply superior methods of analysis or more accurate information when they become available to ensure protection of human health and the environment. Of course, commenters are encouraged to assess the Agency's evolving methodologies and to comment on specific criteria where proposed. Specific challenges to the analysis for the proposed exclusion of the Syntex sludge are described below.

In light of the public comments on the differences between the recent and the 1985 exclusions for the MIS, the Agency has reevaluated the data submitted in 1985, as well as data collected more recently on the MIS residues in order to respond to public comment. These evaluations confirmed the ability of the MIS to generate non-hazardous residues complying with the conditions specified in today's exclusion when treating materials listed in the 1985 rule. Thus, the Agency continues to believe that the differences between the 1985 exclusion and the recent exclusions for the MIS are appropriate and that the 1985 exclusion is protective of human health and the environment.

b. *Comments on the Use of the OLM and VHS Models.—General.* One commenter was concerned that the proposed delisting criteria were generated from the VHS model with no adjustments of the criteria made on the basis of actual health effects. The commenter stated that the extreme range of levels of concern suggested by the model (i.e., 15 percent toluene in the solid residues and 0.002 ppt dioxin in the wastewater) indicate that adjustments be considered to reflect the "real issues" of protecting human health and the environment, while encouraging the use of proven technology.

In response to this comment, the Agency notes that its evaluation was based on a reasonable worst-case disposal scenario for the petitioned wastes. In particular, the Agency looked at the potential health effects due to the ingestion of contaminated groundwater. The range of delisting criteria are a function of the significant differences in constituent toxicities. The Agency has also considered other exposure scenarios and models, and the validity of the assumptions and evaluations made using the VHS and OLM models. As will be discussed later, the Agency has eliminated certain constituents from the testing requirements because the Agency has determined that they cannot realistically be expected to be present in the incineration residues at the levels of regulatory concern. The Agency has also responded to certain comments regarding the method of estimating the levels of concern and has adjusted the VHS model calculations accordingly. Further details are provided later in today's notice.

The Agency also believes that the Delisting Program, particularly through the implementation of upfront exclusions, provides incentives for waste treatment using proven technologies. The identification of target levels of concern that operators can use for process design and optimization will encourage permanent treatment while protecting human health and the environment.

Appropriateness of Modeling Approach. Three commenters expressed concern regarding the Agency's use of the OLM and VHS models as factors in setting the delisting levels, criticizing the conservative assumptions and parameters of the models. For the purposes of today's rule, EPA has considered the appropriateness of the OLM/VHS model approach and of the models' parameters. First, the Agency determined that a reasonable worst-case approach would be appropriate before relieving a waste from the protective management constraints of RCRA Subtitle C. Second, the Agency decided that a landfill exposure scenario would be appropriate. EPA assessed the nature of the solid residues which will be generated by the MIS and concluded that landfilling is the most reasonable worst-case disposal scenario. (Due to the lack of organic content in the residues following incineration, land treatment would probably not be used. Similarly, management in an impoundment is not expected.) In terms of the liquid residues, EPA determined that the groundwater dilution of constituents afforded by application of the VHS model was appropriate, given past management practices for the MIS's scrubber water (i.e., land application).

The Agency further considered whether the OLM/VHS model was the landfill model of choice. The primary criteria in this evaluation were (1) the need to apply a generic model (i.e., non-site specific), and (2) the need to apply an environmentally conservative model. Further, the Agency believes that a conservative approach is particularly warranted in regard to upfront exclusions, because the petitioner has not yet generated any residues and therefore has not provided any waste characterization.

One commenter disagreed with the Agency's application of the OLM and VHS models to this particular waste, noting that these models "assume a worst case disposal of a waste in a municipal landfill with aggressive leachate at pH 5.2 because of the degradation of the municipal solid waste". The commenter believed that it is highly unlikely that the residues would be accepted by a municipal landfill and that the residues will most likely be buried in a capped site designed to minimize water contact and infiltration. The Agency, however, cannot rule out a municipal landfill as a reasonable worst-case disposal scenario because delisted wastes are not subject to Subtitle C controls. Further discussion of other models considered and constituent mobility is provided below.

Consideration of Other Models. The Agency considered the appropriateness of other exposure assessment models which have been developed specifically for dioxin as alternatives to the OLM/VHS model approach. An approach developed by the Center for Diseases Control (CDC) was considered as an alternative (see Kimbrough, R.D., H. Falk, P. Stehr, 1984. Health Implications of 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) Contamination of Residential Soil, *J. Tox. Env. Health*, 14:47–93). The CDC concluded through its modeling effort that concentrations of 2,3,7,8-TCDD above 1 ppb in residential soil are unsafe. Several commenters believed that the Agency should adopt the CDC 1 ppb standard rather than the proposed delisting levels, which they claimed were excessively conservative.

The major differences between the CDC approach and the VHS model are summarized below:

- The CDC used a significantly different unit cancer risk (a factor used to compute a regulatory dose) from that used by EPA to set the health-based regulatory level. Because the CDC unit risk factor is lower, a higher concentration could be set for the same

degree of overall risk than if EPA's factor were used.

• The CDC approach considers exposures to dioxin contaminated soil via ingestion, dermal absorption, and inhalation, while the VHS model considers ingestion of ground water.

• The CDC analysis was originally meant to specify acceptable levels of contamination which have become fixed to residential soils. The delisting levels determined by the VHS model represent raw waste concentrations.

The 1 ppb action level for residential soils recommended by CDC corresponds to an acceptable dose level of 636 femtograms/kilogram/day (fg/kg/day). CDC calculated that the Virtually Safe Dose (equivalent to a cancer risk of 10^{-6}) for dioxin falls within the range of 28 fg/kg/day to 1,428 fg/kg/day, but justified the chosen value of 636 fg/kg/day as acceptable in the context of their specific analysis. If the unit cancer risk of 6.4 fg/kg/day calculated by EPA (Health Assessment Document for Polychlorinated Dibenzo-p-dioxins, U.S. EPA, 1985) is used in the methodology presented by CDC, the resultant "action level" would be about 100-fold less than the 1 ppb level, i.e., on the order of 10 ppt (see the docket to this notice for the calculations supporting this estimation). Despite the numerous differences in the exposure scenarios and modeling approaches, this level is comparable to the levels of concern predicted by the OLM/VHS model analysis for solids. (Additional discussion on challenges to the Agency's unit cancer risk used in the proposal and today's rulemaking as being overly conservative is presented in Section II.A.2.c.v.)

In general, the exposure scenarios considered in the CDC approach are appropriate for dioxin. However, the use of EPA's unit risk number with the CDC assumptions results in a similar, conservative level of concern as the use of the OLM/VHS model. Furthermore, the CDC analysis did not take into account other routes of exposure, including ground water and food chain bioaccumulation. Under certain circumstances, the Agency believes that bioaccumulation may be an equally significant exposure route as those addressed in the CDC approach.[1] The Agency also notes that a number of assumptions used in the CDC approach, including estimated soil ingestion rates, have been revised or have been the subject of serious scientific debate since the development of the CDC action level. Based on the uncertainty associated with the underlying assumptions of the CDC approach and the difference in unit cancer risk levels, the Agency decided that the CDC approach is not a preferable alternative to the VHS model for evaluating this petition at this time. Furthermore, EPA does not believe that the values obtained by employing the VHS model, as confirmed by the modified CDC approach, are excessively conservative.

The Agency also considered application of developmental work by EPA's Office of Research and Development (ORD) for the evaluation of dioxin-related delisting petitions. ORD is currently preparing a detailed exposure assessment document for dioxin. One portion of this work evaluates a variety of potential exposure routes for dioxin-contaminated soils and assigns estimated risk levels to these exposure routes for a given scenario. The Delisting Program has evaluated the merits of this approach and believes that, when finalized, this approach will be a valuable tool. ORD's work, however, has not been released for use at this time and is undergoing extensive peer and Science Advisory Board (SAB) review. Given the preliminary nature of this approach, the Agency has determined that the ORD approach should not be used at this time. However, application of ORD's draft document to the facts of this case supports the low levels of concern predicted by the OLM/VHS model approach (i.e., low ppt level). (This information has also been placed in the docket.)

Migration and Attenuation. Two commenters submitted comments regarding the appropriateness of the VHS model for setting delisting levels for dioxin, insoluble organics, and metals. Specifically, the commenters noted that the VHS model does not include consideration of actual migration potential of a compound because the model does not account for attenuative mechanisms (such as sorption) which would retard the flow of hydrophobic compounds (such as dioxin) in ground water. The commenters believe that the omission of a migration factor in the VHS model will result in an overestimation of receptor concentrations of dioxin, other organic constituents, and metals. One commenter specifically listed hydrogeological conditions which affect the mobility of metals, such as pH, redox conditions, ionic strength, mineralology, and solid-phase surface area. One commenter also cited draft studies and experiments which attempt to demonstrate low mobility of dioxins.

The Agency acknowledges that sorption effects can play an important part in the migration of contaminants through ground water. Sorption effects, however, are highly variable from site to site and are dependent on many factors, such as soil characteristics and other hydrogeologic conditions. In keeping with the reasonable worst case approach, the Agency has determined not to consider site-specific sorption variables in applying the VHS model to these wastes. An important aspect of this reasonable worst-case scenario is that soil and aquifer conditions would not favor the attenuation of contaminants. Given the known existence of mobilizing factors such as infiltration of acidic leachate or precipitation, leachate mounding, and exceedance of soil attenuation capacity, the Agency continues to believe that this conservative approach is appropriate for the purposes of delisting hazardous wastes. Thus, sorption effects, in fact all attenuative effects including degradation, are assumed to have no effect on the receptor concentrations of ground-water contaminants. For very hydrophobic compounds, this assumption is very conservative. The Agency notes, however, that this assumption becomes significantly less conservative when the hydrophobic compounds are codisposed or leached with solvents which tend to mobilize hydrophobic compounds.

One commenter also stated that the time frame for dioxin to reach the compliance point in the VHS model scenario is on the order of tens of thousands of years and that the dioxin is likely to degrade before actually reaching the receptor. However, the length of time required for contaminants in an aquifer to reach a potential receptor may be highly variable; full analysis of dioxin mobility would necessarily require a substantial amount of site-specific information. As discussed above, the Agency does not believe it appropriate to consider site-specific information in this analysis, especially when the Agency cannot discount the possibility that the wastes may be exposed to solubilizing agents which will tend to mobilize any dioxin remaining in the residues. For these

[1] Rappe, C., H.R. Buser, D.L. Stalling, L.M. Smith, and R.C. Dougherty, 1981. Identification of Polychlorinated Dibenzofurans in Environmental Samples. *Nature*, 292:524–526.

Kuehl, D.W., P.M. Cook, A.R. Batterman, D.B. Lothenback, B.C. Butterworth and D.L. Johnson, 1985. Bioavailability of 2,3,7,8-Tetrachlorodibenzo-p-dioxin from Municipal Incinerator Fly Ash to Freshwater Fish. *Chemosphere*, 14:427–437.

Jensen, D.J., R.A. Hummel, N.H. Mahle, C.W. Kocher and H.S. Higgins, 1981. A Residue Study on Beef Cattle Consuming 2,3,7,8-tetrachlorodibenzo-p-dioxin. *J. Agric. Food Chem.*, 29:265–268.

reasons, the Agency has assumed in using the VHS model that (1) attenuation is insignificant, and (2) soil and aquifer conditions do not favor the degradation of contaminants en route to the receptor point.

Waste Volume. One commenter disagreed with the solids waste volume that the Agency used in the VHS model calculations to determine the levels of concern listed in Conditions (3), (4), and (5) of the proposal. The solids volume used in the proposal included the volume of soils covered by the 1985 exclusion that the petitioner indicated might be co-incinerated with the sludge. The commenter stated that the soil volume should not be incorporated in the VHS model calculation because the soils are currently covered by the 1985 exclusion and the rulemaking only sought an exclusion for the residues from the incineration of Syntex's 775 cubic yards of sludge.

The Agency uses the maximum waste volume estimated by petitioners to calculate the maximum allowable constituent concentrations (i.e., the waste-specific delisting levels) against which the waste residue or its leachate must be tested. Generally, lower waste volumes result in higher (less stringent) delisting levels for individual constituents. The Agency has considered various ways to respond to this comment and has selected an approach which (1) adopts a solids waste volume based solely on sludge incineration, and (2) prohibits co-incineration of sludge and soil. The Agency believes that it would be inappropriate to grant the commenter's full request to allow co-incineration and to promulgate an exclusion based on sludge volumes alone. If co-incineration were to occur, the resultant mixed residues could not be segregated (for the purposes of analysis or disposal) into the volume derived from the sludge and the volume derived from the soils. Thus if the VHS model results used in the exclusion are derived from a sluge-only waste volume, it is not appropriate to allow co-incineration which would result in the generation of a different waste volume. Condition (1) of today's exclusion, presented later in this notice, has been modified to include a prohibition of co-incineration.

The Agency does not believe that this prohibition will be burdensome to the petitioner for a number of reasons. First, the original basis for co-incineration was that 1985 MIS trial burn data suggested that co-incineration with diluent soils might facilitate sludge feed and minimize particle size during combustion. In addition, the soils would also provide a heat sink for the sludge (a heat sink is needed in cases where the heat content of a material to be incinerated exceeds the heat capacity of the incinerator). These concerns have been mitigated by the recent modifications to the MIS described in the proposal to this rule (and available in the docket) which have improved the MIS's ability to successfully treat wastes such as the Syntex sludge. Specifically, an oxygen enriched burner has been added to the kiln. This modification has reduced air flow through the secondary combustion chamber and thus allows for the incineration of high heat content wastes such as the Syntex sludge without the addition of soil to act as a heat sink. In addition to recent changes to the MIS, the Syntex sludge has dried over the past three years which will facilitate feeding this material to the MIS without the use of diluent soils. Thus, based on the MIS modifications and best engineering judgment, the Agency believes that co-incineration is unnecessary and that it is appropriate to revise the waste volume used in the evaluation of Syntex's petition.

The Agency originally calculated a maximum expected volume of residues based on Syntex's estimation of (1) the sludge volume reduction due to incineration, and (2) a maximum sludge to soil mixing ratio. Syntex estimated that 775 cubic yards of sludge would be incinerated and would undergo a 63–67 percent volume reduction during incineration. The Agency accepted this volume reduction estimate as reasonable given the water and organic content of the sludge. (However, the Agency conservatively assumed a 60 percent sludge volume reduction in subsequent calculations.) The Agency's original calculations assumed that, prior to incineration, the sludge would be mixed with diluent soils in a ratio of one pound of sludge to 3.5 pounds of soil. The Agency is now discounting this added volume since co-incineration will be prohibited under Condition (1). The revised maximum volume of solid residues is now estimated to be 310 cubic yards, that is, 40 percent of the original sludge volume (i.e., 775 cubic yards x 0.4).

The resultant revisions to Conditions (3), (4), (5), and (6) are presented later in today's notice. (Condition (2) was not affected by this change because it covers wastewaters.) A new Condition (4) has been added in section II.A.2.c.iii below. As a result, proposed Conditions (4)–(7) have been renumbered (5)–(8), respectively.

Leaching. One commenter stated that the organic leachate model (OLM) is inappropriate for predicting the leaching capacity of highly insoluble compounds because (1) highly insoluble compounds are not well represented in the OLM leaching data base, (2) the insoluble compounds that are represented show a poor correlation with the adopted model, and (3) actual leaching data from municipal incinerator ash show that the OLM overpredicts dioxin leaching levels by a factor of 100.

In response to these comments, some background information on the OLM is appropriate. The OLM was constructed using 353 data pairs representing 53 wastes bearing 73 different constituents. A number of the wastes sampled were bound in hydrophobic matrices (e.g., lumpy oil refinery sludge, viscous chemical manufacturing sludge, and tar/dirt mixtures from production of methyl ethyl ketone), other wastes were bound in inorganic matrices, and one waste type represented incinerator ash (API sludge/incinerator ash). The commenter is correct that the correlation coefficient determined solely for the low solubility constituents in the leaching data base is low. However, the correlation coefficient for any general subset of data studied in a regression analysis will be lower than the correlation coefficient for the overall data set. Part of what the commenter noticed is due to the fact that the low correlation coefficient was generated from a small data set.

The Agency agrees, however, that the variability of leaching data in general is partly responsible for the low correlation. In keeping with the reasonable worst-case approach, the Agency is taking a conservative stance in regard to the high variability in the leaching data on mobility of hydrophobic compounds. For this reason, the municipal incinerator ash data cannot be considered by itself. Even if the municipal incinerator ash data were added to the leaching data base, the paucity of these data would result in little or no effect on the general correlation coefficient.

VHS Model Assumptions. One commenter stated that the VHS model is overly conservative because it assumes that the exposed individual ingests all of his or her water from a drinking water well directly downgradient from the disposal site and that the well is only 500 feet from the disposal site. The commenter did not, however, suggest any data supporting different assumptions.

The Agency agrees that the model assumption that the receptor well is

directly downgradient from the disposal site is a worst case assumption. It is not, however, an impossible configuration. Instances of drinking well contamination from municipal landfills are plentiful (see 50 FR 48902, November 27, 1985 for several specific examples). The Agency, therefore, continues to believe that a receptor point situated to receive the highest concentration of contaminant is not unlikely. Further, the Agency often assumes in risk assessment of ingestion scenarios that the exposed 70 kg individual ingests 2 liters a day from a contaminated source over a 70 year life span and continues to believe that this assumption is appropriate. For example, see the notice of data availability for the Water Quality Criteria (45 FR 79318, November 28, 1980), the proposed drinking water standards (50 FR 46936, November 13, 1985), and the proposed expansion of the toxicity characteristic for hazardous wastes (51 FR 21648, June 13, 1986). While these exposure assumptions will not be true for all exposed individuals or all exposure scenarios, the Agency continues to believe that they are appropriate reasonable worst case assumptions.

Conservation of Mass. One commenter disagreed with the application of the VHS model for dioxin because it does not, in general, conserve mass. That is, due to the simplifying assumptions used in the VHS model, the initial velocity of a contaminant entering the aquifer is determined only by the velocity of the ground water, the vertical dispersivity of the aquifer, and the width of the disposal unit. The commenter claimed that this initial velocity is also affected by the properties of the waste materials and net infiltration into the ground water. The commenter stated that, by not considering these factors, the VHS model can overestimate or, more likely, underestimate the dilution that may occur in an aquifer.

EPA acknowledges that the VHS model is more likely to overpredict (rather than underpredict) the receptor concentration of contaminants in any given waste due to the conservative nature of the assumptions underlying the model. EPA also recognizes that all models do not always predict factual values accurately. Notwithstanding, EPA believes that the VHS model provides a useful analytical tool for the evaluation of the hazards posed by these wastes. EPA has considered and rejected the use of alternative models and approaches for this specific petition, as described above. Commenters may, however, demonstrate that more specific alternatives are scientifically valid and adequate to replace such assumptions.

c. *Specific Comments on Proposed Verification Conditions.*—i. *Condition 1—Compliance with Permit Conditions.* The purpose of Condition (1) is to ensure efficient destruction of the constituents of concern by monitoring the operation of the MIS. In response to public comment, the condition has been modified and clarified from the proposal to require compliance with specific permit conditions rather than test burn parameters.

During the time period when EPA was preparing this final rule, the Agency was also finalizing the exclusion for the residues from the incineration of the cancelled pesticides. Very similar comments were received on the two proposed exclusions, many from the same commenter. In preparing responses to these comments, the Agency's approach to upfront exclusions has been refined. Consequently, the Agency is modifying the language in the conditions to improve their clarity.

The revised condition addresses one commenter's concern that, as previously worded, EPA may have been requiring repeated demonstrations of the MIS's ability to achieve the required destruction and removal efficiency (DRE) (see 40 CFR 264.343(a)(2)). This was not the Agency's intent since the DRE demonstration occurs as part of the permitting process rather than through delisting. Further, the MIS has successfully demonstrated its ability to achieve the required DRE for a number of waste matrices and thus additional demonstrations would be unnecessary.

The modified condition requires that the petitioner analyze any residues generated whenever the MIS is operating outside of the limits relevant to the mechanical operation of the incinerator as specified in its permit. The Agency is specifically concerned with a hypothetical situation where the MIS experiences a mechanical system failure (i.e., failure of the secondary combustion chamber (SCC) or the air pollution control system, failure of the kiln to fire, etc.) after Syntex has made a successful demonstration under Condition (7) of the exclusion and has terminated the daily analytical testing specified in Conditions (2) through (6). Although the Agency does not expect these failures to occur, the modified condition requires Syntex to conduct verification testing on the incinerator residues should such a scenario occur.

In addition, the modified condition prohibits co-incineration of the Syntex sludge and diluent soil, as discussed above.

Revised Condition

Condition (1): The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, Syntex must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (6), regardless of whether or not the demonstration in Condition (7) has been made. Co-incineration of the Syntex sludge and diluent soils is prohibited under this exclusion.

ii. *Conditions (2) and (3)—Metals Analyses.—Differences between Syntex Proposal and 1985 Exclusion.* One commenter questioned why the proposal imposed more stringent maximum allowable leachate and treatment residue concentrations for mercury, chromium, and selenium than the 1985 rule, as well as limitations for the remainder of the EP toxic metals, nickel, and cyanide that have no counterpart in the 1985 rule. As discussed earlier, the Agency is requiring in this exclusion that the residues be tested for all of the EP toxic metals, nickel and cyanide because the Syntex proposal is for an upfront exclusion of treatment residues that have not yet been generated or characterized. A similar approach was taken for the development of conditions for the exclusion for the cancelled pesticides. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. No such data exist for the Syntex or cancelled pesticides treatment residues since they were not generated at the time of proposal.

The commenter also questioned why the specific delisting levels for chromium, mercury, and selenium proposed for Syntex are different than the levels listed in the conditions for the 1985 exclusion. As discussed earlier, the delisting levels have been determined by back-calculating from the health-based regulatory levels through the VHS model and are a function of the waste volume. Since the waste volume covered by the 1985 exclusion differs from the volume covered by the Syntex proposal (as well as the expected waste volume from the treatment of the cancelled pesticides), the dilution factors differ and the resultant delisting levels also differ.

Differences between Syntex Proposal and Other EPA Program Levels for Metals. The commenter requested an

explanation of why the proposed delisting levels are lower than the EP Toxicity characteristic limits. The general purpose of the hazardous waste characteristics, such as the EP Toxicity characteristic, is to regulate the worst, rather than all, of the hazardous wastes exhibiting a given characteristic. Wastes leaching concentrations of the EP toxic metals at levels below the EP Characteristic (100 times the National Primary Drinking Water Standards) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous if, pursuant to the criteria for listings contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threats to human health and the environment. Thus, levels established by application of delisting criteria (e.g., the VHS model) that are below the EP Toxicity characteristic levels may properly be considered to be an indication of a waste's hazardousness.

One commenter questioned whether the levels of concern specified in proposed Conditions (2) and (3) are higher than indigenous levels of metals in soils in Missouri. While specific response to this comment is not possible because the commenter did not provide data on actual native soil concentrations of metals, the Agency believes that the commenter may be inappropriately comparing total metal concentrations in soils with the leachable or mobile metal concentrations listed in the conditions of this exclusion. Nevertheless, the Agency is constrained by (1) its legislative mandates to consider *wastes* (which do not include uncontaminated native soils) and their potential risk to human health and the environment, and (2) the delisting petition evaluation which currently does not consider site-specific factors such as background soil levels because the wastes, once excluded, are no longer subject to Subtitle C control.

The commenter also questioned why the levels of concern specified in proposed Conditions (2) and (3) for metals are significantly lower than levels established by the U.S. Department of Agriculture (USDA) for regulating land application of municipal sludge and lower than other levels suggested for cattle feed or compost growing soil. While it is unclear which levels the commenter is referencing, differences in statutory requirements and goals among different regulatory programs and agencies, will, in some cases, result in different levels of concern. Where possible, when programmatic goals and assumptions are similar, EPA attempts to coordinate with other agencies and similar internal programs. For example, maximum contaminant levels (MCLs) established under the Safe Drinking Water Act are used as health-based regulatory levels in delistings. The agency believes that the health-based levels set for the landfill/groundwater reasonable worst-case scenario employed here are necessary to protect human health and the environment in accordance with the mandates of RCRA.

The commenter also questioned why the Agency is requiring such rigorous treatment when data from municipal incinerators indicates that ash from such incinerators can exceed the MIS's delisting levels for both dioxins listed in proposed Condition (5) and the metals listed in proposed Conditions (2) and (3). The Agency believes that the levels of metals and dioxins commonly found in municipal incinerator ash are not relevant to Syntex's delisting petition. Issues related to the presence of metals and dioxin in municipal incinerator ash will be considered in the Agency's overall decision on appropriate management standards for such ash.

Health-based Regulatory Levels. One commenter submitted specific comments on the MCLs which the Agency used in the proposed exclusion as the health-based regulatory levels for the EP toxic metals. The commenter argued that the drinking water standards (MCLs) should not have been used by EPA in establishing the proposed Syntex delisting levels for metals. The commenter claimed that the MCLs are based on chronic exposure scenarios, and would necessarily overestimate the adverse health impact under a scenario where "the MCL is reached only transiently".

The Agency believes that the steady-state VHS model provides a reasonable worst case evaluation of this petition for constituents of concern at a receptor well. In most cases, the concentration of a constituent in the leachate represents only a small fraction of the total mass of the constituent in the waste. Sustained leaching of the constituent is possible, which would lead to chronic exposure to the chemical over long time periods. Therefore, the Agency believes that use of health-based standards (such as MCLs) derived for chronic exposures is valid for evaluation of the Syntex petition.

The commenter also raised a variety of questions concerning the bases of the MCLs for a number of the metals. The Agency's response to these comments is available in the docket to today's rule (see "Response to Public Comments on Health-based Levels Used in the Syntex Proposed Exclusion", May, 1988). The Agency is in the process of revising the MCLs, and all of the points raised by the commenter were acknowledged by EPA in a proposed rule (50 FR 46936, November 13, 1985). As discussed in the docket, EPA does not believe that the questions raised warrant the use of different health-based levels for these constituents in this rulemaking.

The same commenter also challenged the health-based levels used to establish delisting levels for nickel and cyanide. The commenter further questioned why analysis of these constituents was necessary since neither nickel nor cyanide were detected in the untreated sludge. This commenter, in providing comments on the proposed exclusion for the cancelled pesticides, also identified a number of differences in the health-based regulatory levels used for the Syntex and cancelled pesticides proposals. The commenter correctly attributed these differences to updates in the health-based regulatory levels and requested that the Syntex exclusion be finalized using the revised values.

The Agency notes that the nickel standard used to calculate the maximum allowable nickel leachate levels in the incineration residues has been revised from the 0.35 ppm value used in the proposal to 0.5 ppm, to reflect the current reference dose for nickel and in direct response to the commenter's request to use the more current and appropriate values. The bases for the health-based levels are described in detail in a proposed rule establishing restriction levels for the land disposal of "California List" metals and cyanide (see 52 FR 29994, August 12, 1987). These proposed health-based levels were established for the same exposure route as the MCLs (i.e., drinking water), and the Agency believes these levels are adequate for setting delisting levels in this rule. For both chemicals, the commenter noted the uncertainty in the bioavailability of these chemicals when ingested in food or water. The Agency agrees that some uncertainty exists in this area, but believes that the safety factors incorporated into the health-based levels appropriately address these (as well as other) uncertainties

In response to the commenter's statement regarding the absence of nickel and cyanide in the untreated sludges, the Agency notes that the petitioner did not submit total constituent or leaching data for either nickel or cyanide in the untreated sludge. The commenter's claim that these constituents are absent in the sludge is therefore unsubstantiated

Furthermore, cyanide is a possible product of incomplete combustion which may form during the incineration process and was listed in Attachment A of the petitioner's March 9, 1987 submittal as a potential constituent of concern. For these reasons, EPA believes that the requirement for analyses of nickel and cyanide in the treatment residues is justified.

Revised Condition. As described below, Conditions (2) and (3) have been modified to address concerns raised by public comment regarding their ambiguity, the waste volume used in the calculation of the maximum acceptable levels for solids, and an update to the nickel standard. Following EPA's refined approach to upfront exclusions, the conditions have been changed to clarify the sampling requirements and to revise the maximum acceptable solid treatment residue concentrations. The technical subject matter of the conditions has not been changed except as specifically discussed.

One commenter expressed confusion regarding the sampling frequency for the wastewater in Condition (2) and the materials to be sampled in Condition (3). The conditions, as presented below, have been modified to address these comments.

One commenter requested that the sampling requirements for Condition (3) be modified so that Syntex can combine the three solid residues (i.e., kiln ash, cyclone ash, and separator sludge) and analyze one sample rather than three (as originally proposed). The Agency has decided to allow proportional compositing of the kiln and cyclone ash due to their expected similarities. The Agency is continuing to require separate analysis of the separator sludge, however, due to known matrix differences and potential compositional differences between the sludge and the ashes which would be masked by compositing. The separator sludge may contain higher concentrations of the more volatile toxic metals and will also contain salts and other compounds which may affect the hazardousness and analysis of the waste. The conditions have been modified accordingly as presented below.

One commenter questioned why proposed Conditions (2) and (3) in the proposal were not subject to the same termination provisions as the organics and dioxin testing conditions (i.e., proposed Conditions (4) and (5), respectively). As will be discussed later in more detail in the context of Condition (7), the Agency agrees with the commenter that Conditions (2) and (3) should be subject to termination under certain circumstances and has modified the exclusion to terminate Conditions (2) and (3) if Syntex can demonstrate that four consecutive batches (one batch of residue from each eight hour burn) of the petitioned residues are non-hazardous with respect to the respective delisting levels of the EP toxic metals, nickel, and cyanide.

The Agency notes that Condition (2) in the proposal contained a typographical error in the maximum allowable wastewater levels for arsenic chromium, lead and silver (see 52 FR 33443). The level of concern should have been *0.61 ppm* rather than 0.061 ppm. The final exclusion contains the corrected value.

The maximum allowable solid treatment residue concentrations in Condition (3) have been recalculated, as discussed earlier, to account for the revised solid treatment residue volume. The revised conditions are presented below:

Revised Conditions

Condition (2): Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed according to SW–846 methodologies.

Condition (3): One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed according to SW–846 methodologies. Any residue which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations.

Constituents	Maximum allowable solids treatment residue EP leachate concentrations [1] (mg/l)
Arsenic	1.6
Barium	32
Cadmium	0.32
Chromium	1.6
Lead	1.6
Mercury	0.065
Nickel	16
Selenium	0.32
Silver	1.6
Cyanide	6.5

[1] Corresponds to a maximum waste volume of 310 cubic yards.

iii. *Condition (4)—MEP Test Method for Stabilized Incineration Residues.* One commenter expressed concern that existing data generated by the MIS under the 1985 exclusion show chromium, mercury, and selenium levels which exceed both the levels established in the 1985 exclusion and the levels proposed for Syntex. The Agency acknowledges that the MIS, at times, can generate residues with hazardous levels of mobile metals. The significant degree of toxicity reduction which occurs during incineration is, under certain circumstances, accompanied by an increase in the mobility and concentration of toxic metals in resultant incineration residues. This is due to the oxidative atmosphere found in incinerator kilns. This phenomenon is the basis for the Agency requirement that Syntex test each batch of wastes for certain mobile metal concentrations.

In an amendment to its petition, Syntex has indicated that it intends to stabilize incineration residues that contain hazardous levels of mobile metals using a Portland cement-type stabilization. The Agency recognizes that management of incineration residues often includes chemical treatment of the solid waste matrices to bind mobile metals. The resultant stabilized wastes are frequently created by mixing the solid incineration residues with Portland cement or other similar products. The Agency has previously granted petitions for stabilized wastes. See, for example, 50 FR 37365, September 13, 1985; 51 FR 41310, November 14, 1986; and 53 FR 15422, April 29, 1988. Similarly, incineration followed by ash stabilization was recently proposed as Best Demonstrated Available Technology (BDAT) for certain hazardous petroleum refining wastes (which contain a combination of certain organics and metals) under 40

CFR Part 268 (i.e., the land disposal restrictions rules) (see 53 FR 11742, April 8, 1988). Data from previous delisting petitions and data gathered as part of the development of the land disposal restriction rules indicate that stabilization can be an effective means of reducing the mobility of toxic metals.

For chemically stabilized wastes, the appropriate method to test for concentrations of toxic metals in waste leachate is the Multiple Extraction Procedure (MEP), rather than the Extraction Procedure. See SW–846, Method 1320. Thus, if Syntex stabilizes its ash or sludge residues, it must use the MPE and compare the resultant leachate concentrations to the delisting levels of concern listed in Condition (3). Thus, Condition (4) has been added to require the appropriate test method in the event that Syntex stabilizes any of the solid incineration residues. (Proposed Conditions (4)–(7) have been renumbered (5)–(8), respectively.)

The Agency assumed a maximum waste volume of 400 cubic yards as input to the VHS model to determine the maximum acceptable MEP concentrations in the stabilized waste. This volume assumes worst case conditions that all of the solid treatment residues will be stabilized and that stabilization will result in a 30 percent volume increase. This worst case volume resulted in the same maximum allowable treatment residue concentrations as listed in Condition (3) because the VHS model predicts similar dilution effects for all waste volumes under 475 cubic yards. Thus, Condition (4) requires that the petitioner meet the delisting levels specified for metals in Condition (3). Additionally, Condition (4) is subject to termination provisions similar to those for Condition (3), i.e., Syntex may discontinue testing (upon EPA approval), except that Syntex must continue to stabilize subsequent batches in order to avoid future testing. This requirement is necessary to ensure that future batches, after testing for mobile metals has terminated, are not hazardous due to leachable metal levels.

If Syntex chooses to stabilize the solid residues, the Agency is requiring that the sampling and analyses for organics and dioxins listed in Conditions (5) and (6) be conducted on the residues prior to stabilization. The basis for this requirement is twofold: (1) For organics (including dioxin), analysis of the incinerator solid residues is much easier than the analysis of stabilized residues and thus lower and more protective analytical quantitation limits would be achieved, and (2) analysis of the unstabilized residues is more environmentally conservative because it discounts any dilution of constituent concentrations which may occur during stabilization. Further, stabilization is currently used primarily to minimize the mobility of metals and is not well demonstrated for organics. For these reasons, the Agency believes that the appropriate sampling point for organics analysis is prior to stabilization, if used.

Additional Condition

Condition (4)—If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in Condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed according to SW–846 methodologies. Any residue which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized the analyses required in this condition supercede the analyses required in Condition (3).)

iv. Condition (5)—Organics Analyses. One commenter claimed that the sampling conditions were too ambiguous to provide notice upon which to comment. Although the Agency disagrees, several minor modifications have been made to Condition (5) to clarify the condition. Specifically, the sampling requirements have been clarified to refer to the more specific language of revised Conditions (2) and (3), the termination language (i.e., removal of batch testing requirements) has been moved to Condition (7), the calculation of the solids levels has been revised because of the change in estimated waste volume discussed earlier, and revised health-based regulatory levels have been used to calculate the levels of concern for a number of constituents. These changes, which are discussed in more detail below, do not alter the technical effect of the conditions except as specifically discussed.

Differences between Syntex Proposal and 1985 Exclusion. One commenter believed that the Maximum waste residue concentrations proposed for organics are excessively low and are not necessary to protect human health and the environment. The commenter questioned why any testing for organices is necessary, because the 1985 exclusion did not require batch testing for organics. The Agency refers the commenter to the discussions earlier in this notice regarding the differences between the 1985 exclusion and the upfront exclusions proposed in 1987 and 1988 for Syntex and the cancelled pesticides.

Differences between Syntex Proposal and Other EPA Program Levels for Organics. One commenter questioned why the maximum allowable waste concentrations for the organics are less than the levels proposed by EPA for the expanded Toxicity Characteristic (see 51 FR 21648, June 13, 1986). As was discussed earlier with respect to a similar question about the delisting levels for metals and the EP toxcity characteristics levels, the Agency believes it is appropriate that the delisting criteria be more conservative than the hazardous waste characteristics.

Health-based Regulatory Levels. One commenter on the proposed exclusion for the cancelled pesticides pointed out a number of differences in the health-based regulatory levels used for the Syntex and cancelled pesticides proposals. The commenter correctly attributed these differences to updates in the health-based regulatory levels and requested that the Syntex exclusion be finalized using the revised values. In direct response to this comment, the Agency has updated the health-based regulatory levels to use the more current and appropriate values for four constituents of concern, specifically, choloroform, 1,2-dichloroethane, dichloroemethane, and 2,3,4,6-tetrachlorophenol. Slight modifications (due to the application of a consistent policy on the use of significant figures) were also made to the health-based regulatory levels for dibenz(a,h)anthracene, toluene, 2,4,5-trichlorophenol, and 2,4,6-trichlorophenol. The references for the revised numbers are available in the docket.

One commenter stated that it was impossible to comment on the acceptability of the proposed delisting levels because the health-based regulatory levels were not published in the proposal. These health-based regulatory levels were, however, placed in the docket to the notice and were thus available for review to substantiate any comment. Although the Agency believes that availability of such information in the docket fully complies with applicable requirements for notice, the Agency intends to publish such numbers in future proposals.

One commenter objected to the Agency's intention, as stated in the

proposal, to add new constituents to the list of constituents in proposed Conditions (4). The Agency has not added any additional constituents to the list in condition (5) (proposed condition (4)).

Constituents of Concern. One commenter believed that the proposal was unclear as to how the list of constituents required to be analyzed as a condition for exclusion was developed since the list did not exactly match the combined lists in Tables 1 and 2 of the proposal. The Agency notes that benz(a)anthracene was inadvertently omitted in Table 2 of the proposal. Table 2 presented potential products of incomplete combustion and other hazardous constituents of concern identified in Table 4 of the 1985 proposed exclusion (see 50 FR 23725) and should have included benz(a)anthracene. Additionally, as was stated in the Syntex proposal, a number of constituents were not included in the condition because health-based regulatory levels are not available.

In response to a comment discussed earlier which stated that the Agency should consider actual health effects, the Agency has eliminated the testing requirements for toluene, 2,3,4,6-tetrachlorophenol and 2,4,5-trichlorophenol in the solid residues since the maximum allowable treatment residue concentrations exceed 1,000 ppm. As discussed in the cancelled pesticide proposal (see 52 FR 7903), the Agency believes that it is highly unlikely that these constituents could be present at such high levels following incineration in the MIS. This conclusion is supported by (1) analytical test results on residues generated previously by the MIS (*see* Tables 4 and 5, 50 FR 23725, June 5, 1985 and additional data in the docket to this notice), and (2) the MIS's demonstrated ability to achieve 99.9999 percent destruction and removal efficiency (DRE) as required by 40 CFR 264.343(a)(2).

Calculation of Maximum Allowable Residue Concentrations. One commenter requested clarification on how the Agency calculated the maximum allowable treatment concentrations. While this information was provided in the proposal and in the docket to the proposal, the process used in these calculations is reiterated here. The maximum allowable concentrations represent the maximum waste concentrations which could be managed in the reasonable worst case scenario described by the VHS model and would not exceed the Agency's health-based regulatory level at a drinking water well (i.e., compliance point) 500 feet downgradient from the hypothetical disposal site. The maximum allowable levels were back-calculated from the health-based regulatory levels for the constituents of concern through the VHS and OLM models. The maximum expected waste volume of the solid residues was used to determine the aquifer dilution which would occur as the landfill leachate moved through the aquifer to the compliance point. The health-based regulatory levels were divided by this dilution factor to calculate the maximum allowable leachate concentrations for each of the constituents of concern. These maximum allowable leachate concentrations were in turn used in the OLM (which predicts leachate concentrations from total waste concentrations and constituent solubilities) to back-calculate the maximum allowable solid waste concentration. The calculations for the maximum allowable wastewater concentrations assumed that the leachate concentrations would be equivalent to the total wastewater concentrations, that is, the wastewater itself would be introduced directly into the aquifer.

Revised Condition

As a result of the comments and factors discussed above, the condition has been modified:

Condition (5): Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed according to SW-846 methodologies. Any solid or liquid residues which exceed any of the applicable levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations.

Maximum Allowable Wastewater Concentrations (ppm):

Constituents	Concentrations [1]
Benz(a)anthracene	1×10−4
Benzo(a)pyrene	4×10−5
Benzo(b)fluoranthene	2×10−4
Chloroform	0.07
Chrysene	0.002
Dibenz(a,h)anthracene	9×10−6
1,2-Dichloroethane	0.06
Dichloromethane	0.06
Indeno(1,2,3-cd)pyrene	0.002
Polychlorinated biphenyls	1×10−4
1,2,4,5-Tetrachlorobenzene	0.13
2,3,4,6-Tetrachlorophenol	12
Toluene	120
Trichloroethylene	0.04
2,4,5-Trichlorophenol	49
2,4,6-Trichlorophenol	0.02

[1] Assumes 3,000,000 pounds of wastewater will be generated.

Maximum Allowable Solid Treatment Residue Concentrations (ppm):

Constituents	Concentrations [2]
Benz(a)anthracene	1.1
Benzo(a)pyrene	0.43
Benzo(b)fluoranthene	1.8
Chloroform	5.4
Chrysene	170
Dibenz(a,h)anthracene	0.083
Dichloromethane	2.4
1,2-Dichloroethane	4.1
Indeno(1,2,3-cd)pyrene	330
Polychlorinated biphenyls	0.31
1,2,4,5-Tetrachlorobenzene	720
Trichloroethylene	6.6
2,4,6-Trichlorophenol	3.9

[2] Corresponds to a maximum waste volume of 475 cubic yards.

v. *Condition (6)—Dioxin Analyses.* In response to public comment, EPA has made several modifications to proposed Condition (5). These include: Revised maximum allowable solid treatment residue concentrations to account for the revised treatment solids waste volume, use of Method 8290 instead of the RegionVII High Resolution Gas Chromatography/High Resolution Mass Spectrometry (HRGC/HRMS) method for dioxin analysis, and specification of practical quantification limits (PQLs). These modifications, as well as other issues of concern to the commenters, are discussed in more detail in the following subsections.

Differences between Syntex Proposal and 1985 Exclusion. One commenter objected to the inclusion of testing for dioxin because it is inconsistent with the 1985 exclusion and because the commenter did not believe these levels were accurate. As stated earlier, the conditional testing requirements have been added to verify that the MIS can treat Syntex's sludge as successfully as the petitioner claims it can. If the petition were a conventional petition instead of an upfront petition, the conditional testing requirements may not have been needed. One commenter also claimed that the sampling conditions were too ambiguous to provide notice upon which to comment.

Although the Agency disagrees, several minor modifications have been made to Condition (6) to clarify the condition.

One commenter referenced the 1985 exclusion, pointing out that explicit limits were not set for dioxin at that time, and that the Agency should be consistent and apply similar criteria to the Syntex petition. As stated earlier in the Agency's response to general comments, the Agency's general approach to dioxin and that of the delisting program have developed considerably since the 1985 exclusion was promulgated, and the 1985 exclusion was not an upfront exclusion. Quantitative evaluation criterion, such as the OLM/VHS modeling approach, were not available at the time of the 1985 exclusion. It is, therefore, not appropriate to apply the same criteria to the Syntex petition as were used in 1985.

One commenter noted that the dioxin levels in the proposal are significantly more conservative than the levels considered in the 1985 exclusion. The commenter further noted that the Agency indicated in 1985 that the 1985 detection limit levels for dioxin in solids and aqueous media were not of regulatory concern, even though lower levels were achievable. In 1985, the Agency viewed the determination of dioxins by HRGC/HRMS as an experimental method. The Agency now believes that the better detection limits that are available (see discussion below on Method 8290), and the more conservative levels proposed for this exclusion, are more consistent with the Agency's unit cancer risk values and with the evolution of its reasonable worst case modeling approach. The agency also believes that the development of a more conservative approach is a reasonable means of ensuring protection of human health and the environment.

One commenter submitted a catalog of thermal treatment units which have treated dioxin-contaminated materials in the U.S. and claimed that few of these units have achieved the dioxin delisting levels specified in the proposed exclusion. The Agency has examined the commenter's catalog and has concluded that the referenced thermal treatment units may indeed have actually achieved the delisting levels of concern, as each unit achieved non-detectable levels of dioxin in their ash. Without more information, there is no means to know whether the units did or did not achieve the delisting levels. Notwithstanding, the Agency notes that in some cases the detection limits achieved were equivalent to or below the PQLs finalized in today's exclusion.

The agency also notes that if the data presenting detected levels of TCDD in the 1985 exclusion from the then experimental HRGC/HRMS analysis were re-evaluated using the Delisting Program's current evaluation criteria, the detected levels of 2,3,7,8–TCDD and TCDDs in the 1985 petitioned residues would have fallen below current levels of concern. Specifically, Table 8 of the proposal for the 1985 exclusion (see 50 FR 23727, June 5, 1985) presented uncertified analytic results of 0.7 ppt of 2,3,7,8,–TCDD and 2.6 ppt of TCDDs in the kiln ash. Using the Toxicity Equivalent Factors currently in use by EPA and presented in the Syntex proposal (Risk Assessment Forum, "Interim Procedures for Estimating Risk Associated with Exposure to Mixtures of Chlorinated Dibenzo-p-Dioxins and Dibenzofurans (CDDs and CDFs)", October, 1986), these levels are equivalent to 0.72 ppt TCDD equivalents (0.7 ppt + (2.6 ppt — 0.7 ppt)x(0.001) = 0.72 ppt). This TCDD equivalent value, when evaluated in the OLM/VHS model with the estimated solids volume of 2.4 million pounds for the 1985 exclusion, results in a compliance point concentration of 0.1 parts per quadrillion (ppq), which is below the health-based regulatory level of 0.2 ppq. Therefore, the 1985 exclusion, if reevaluated today, would pass the same analysis required for the Syntex (and for the cancelled pesticides) petition.

One commenter expresses confusion regarding the Agency's discussion of the calculation of the 2,3,7,8–TCDD toxicity equivalent on p. 33444 of the proposed rule. The sentence of concern to the commenter should have read "The toxicity equivalent levels *are calculated by multiplying the factors listed below by any detected levels of tetra-, penta-, or hexachlorodibenzo-p-dioxin or -furan* and summing the values for comparison to the equivalent levels set in Condition (5)." The *underlined* text was inadvertently omitted in the proposal.

Health Based Regulatory Levels and Differences between Syntex Proposal and Other EPA Program Levels for Dioxin. One commenter noted that the levels of concern in the proposed exclusion are higher than standards proposed by the State of Missouri and that the higher levels proposed by EPA may thus have adverse impacts on fish and wildlife resources. While the commenter did not identify specific constituents of concern or standards from the State of Missouri, the Agency assumes that the commenter was referring to the State's zero discharge criteria for dioxin under the National Pollution Discharge Elimination System (NPDES) program. The Agency believes that the level of concern finalized in today's rule of 0.002 ppt of 2,3,7,8–TCDD equivalents in the petitioned wastewater is not of concern because the finite volume of wastewater to be generated would be subject to significant in-stream dilution which would occur if the waste were discharged directly. The Agency notes, however, that petitioners who successfully petition the EPA for an exclusion for their wastes are still responsible for compliance with any more stringent state and local regulations which may be applicable.

In contrast, as stated above, several commenters objected to the proposed dioxin delisting levels as being unreasonably low in light of the Center for Disease Control (CDC) level of 1 ppb for residential soils. Another commenter stated that the proposed delisting levels for dioxin are far more restrictive than the levels currently used in Missouri (i.e., the CDC's 1 ppb level) to designate residential properties as "dioxin sites". This commenter believes that, if the CDC level is in fact correct, other property where potential exposure to the public would be equal to or less than exposure for residential use should be "delisted" at 2,3,7,8–TCDD levels below 1 ppb. One commenter believes that the proposed delisting level of 0.5 ppt for solids is unnecessary to protect the public health and that the decrease in risk between 1 ppb and 0.5 ppt will be very small and difficult to quantify.

As discussed earlier, the Agency believes that the CDC and VHS model approaches result in similar levels of concern when equivalent health-based levels are used as the basis for the analyses. The Agency believes that reasonable worst case assumptions, including the use of conservative health-based levels, are appropriate in establishing protective delisting levels for this exclusion.

One commenter challenged the Agency's unit cancer risk value used to derive the dioxin health-based regulatory level for the VHS model groundwater exposure scenario in this exclusion. The Agency acknowledges that the value used is conservative, but continues to believe that this conservative unit cancer risk value is appropriate for the purposes of this delisting evaluation. The Agency's full response to these comments is available in the docket to this rule (see "Response to Public Comments on Health-Based Levels Used in the Syntex Proposed Exclusion", April 1988).

Maximum Allowable Dioxin Treatment Residue Concentrations.

Some commenters on the Syntex proposal expressed confusion about the presentation of the dioxin delisting levels and the discussion of the detection limits. A number of commenters were concerned that the Agency was requiring that the petitioner achieve detection limits that are as low as the delisting levels. As stated in the Syntex proposal, the Agency recognizes that analytic results at the delisting levels are not currently achievable using available technology and rather intended that the petitioner use the best available analytical method. Further discussion on detection limits is presented later in this section.

The revised maximum allowable solid treatment residues concentration is 5 ppt due to the revised solid residue volume.

Required HRGC/HRMS Method. One commenter stated that the Agency should only require the petitioner to use Method 8280, which is a high resolution gas chromatography, low resolution mass spectrometry (HRGC/LRMS) method, since the Agency granted an exclusion for the 1985 petition on the basis of Method 8280 results. The commenter stated that it is arbitrary of the Agency to require HRGC/HRMS analysis now when HRGC/LRMS was adequate before. Although the Agency stated in 1985 that "in evaluating the detection limits set for kiln ash, CHEAF media, and other solids for the CDDs and CDFs, the Agency does not consider these levels to be of concern", this statement and the means by which the Agency evaluated concerns reflected the technological limits on abilities to detect constituents. Given the levels of concern predicted by the delisting modeling tools, EPA believes that the petitioned residues should be analyzed by the best available method which achieves practical quantitation limits which are as close as possible to the delisting levels. The modeling tools used to determine the maximum allowable treatment residue concentrations were not available at the time of the 1985 exclusion. In addition, HRGC/HRMS methods were experimental technology at that time and no sufficiently refined and established for routine use. Given the current availability of the delisting modeling tools which predict that low levels of dioxin may be of concern, and the availability of HRGC/HRMS analysis, the Agency believes that it is appropriate to make improvements in the methodology used in 1985 in order to develop environmentally and technically responsible exclusions.

The Syntex proposal stated that the Region VII HRGC/HRMS analytical method would be used when analyzing the petitioned residues for dioxin. As previously noted, subsequent to the publication of the Syntex proposal, the Agency proposed and granted an exclusion for the residues from the incineration of dioxin-contaminated cancelled pesticides. Very similar comments were received on the two proposed exclusions and on the analytical method for detecting dioxin, many from the same commenter (Syntex). In preparing responses to these comments, the Agency's approach to upfront exclusions has been refined. Subsequently the Agency has determined to modify Syntex's exclusion to require use of Method 8290 (which is very similar to the Region VII HRGC/HRMS method). Method 8290, as described in the cancelled pesticides proposed and final exclusion, has been subjected to a rigorous development and single laboratory validation process by the EPA Office of Solid Waste (OSW) and the Environmental Monitoring and Systems Laboratory in Las Vegas (EMSL/LV). A full description of the method is available in the docket to this notice.

One commenter protested the Agency's proposed requirement that a HRGC/HRMS method be used to analyze the residues for dioxin. The commenter objected to the use of a method which is complex, costly, has not been subject to general notice and comment through rule-making, and is not in final form. The commenter further stated that laboratories are inexperienced in detecting dioxin homologs other than the 2,3,7,8-TCDD homolog. As stated in the cancelled pesticides proposal and further discussed in the cancelled pesticides final rule, Method 8290 has been subjected to single laboratory validation (see ORD Publication EPA 600/4–86–004, "Protocol for the Analysis of 2,3,7,8-Tetrachlorodibenzo-p-dioxin by High Resolution Gas Chromatography/High Resolution Mass Spectrometry", January, 1986). HRGC/HRMS analysis has been available for several years, and while it is a sophisticated method, it is no longer an experimental procedure. Contrary to the commenter's concerns, a number of Agency and commercial laboratories have participated in the development of this method and are skilled in the detection of a variety of dioxin and furan homologs. As described above, EPA is using Method 8290 in response to challenges to the use of the Region VII HRGC/HRMS method. EPA has received comment on the operation and use of Method 8290 on the cancelled pesticides proposal. Further, SW–846 methods can be used as regulatory requirements in delistings by incorporation into actual rulemakings. This was proposed to be done for the Region VII method, and is being done for Method 8290 in response to the challenges to the Region VII method.

The commenter also expressed concern with the ambiguity associated with the Agency's stated intent to evaluate analytical data to ascertain whether the analytical methods have been conducted properly. The Agency's evaluation of the sufficiency of chemical analyses is multifaceted and readers are referred to SW–846 and the written protocol for individual methods for further discussion of quality asssurance procedures. Generally, the Agency considers the results of accuracy and precision QA/QC data as measures of the usefulness of analytical results.

One commenter expressed confusion regarding the Agency's evaluation of detected homologs at levels below the maximum allowable treatment residue concentrations. In response, all detected homologs will be included in the calculation of the 2,3,7,8-TCDD toxic equivalent concentration, regardless of whether the individual homolog is detected above or below the applicable maximum allowable concentration for 2,3,7,8-TCDD equivalents listed in Condition (6).

One commenter recommended that toluene be used instead of benzene in the extraction phase of the analysis. As presented in the protocol for Method 8290, toluene is an acceptable extraction solvent for soil matrices and thus can be used in the analysis.

The Agency acknowledges that there are complications associated with the use of HRGC/HRMS methods. Nevertheless, the Agency is responsible for choosing an analytical method which is best suited for measuring the potential hazardousness of the Syntex incineration residues, not the method which is most convenient and inexpensive. Given the need for high analytical sensitivity to assure careful analyses of residue constituents, the Agency has selected Method 8290. Additionally, the Agency notes that there are a number of laboratories which are familiar with and experienced in the conduct of Method 8290 and therefore would know how to evaluate dioxin homologs properly and whether the method was properly being implemented. Many of these laboratories participated in the development of the method and should be able to provide analytical services with a minimal turn-around and adequate quality control.

Practical Quantitation Limits (PQLs). Several commenters objected to the detection limits specified in the proposal, claiming that they could not be achieved. Further, one commenter objected to the use of these levels and the HRGC/HRMS approach because it would produce false positive results. To further clarify proposed Condition (5) in response to these comments, EPA is specifying in Condition (6) that the petitioner achieve certain practical quantitation limits (PQLs) when analyzing the petitioned residues for dioxin. Several commenters suggested that routinely achievable detection limits (i.e., PQLs) be specified in the exclusion. EPA currently believes that laboratories that are performing Method 8290 on incineration matrices (which are fairly free of interferences) should be able to achieve PQLs of 15 ppt for solids and 120 ppq for wastewaters. The Agency will require these PQLs as the maximum acceptable PQLs. As discussed previously in the cancelled pesticides proposal and final rule, EPA will specify in exclusions involving dioxin that petitioners provide PQLs rather than minimum detection limits (MDL) for the following reasons:

- PQLs provide a reasonable degree of certainty that true values, rather than false negatives (or false positives), are presented. (If the true sample concentration is equal to the MDL, the analytical results will not be quantitative, *i.e,* will be reported as "less than the MDL" on about 50 percent of all analyses.)
- The PQL takes into account a number of factors that are generally difficult to control and that contribute to the uncertainty associated with the MDL, such as high background levels, significant matrix interference, and operator and instrument variability. PQLs therefore provide a greater degree of certainty as to the actual constituent concentrations.

Other examples of instances where the Agency suggests the use of PQLs or is proposing to establish PQLs (rather than MDLs) include a proposed rulemaking for setting PQLs for volatile organic contaminants in drinking water (*see* 50 FR 46902, November 13, 1985) as well as SW–846 Methods 8240 and 8270 for gas chromatography/mass spectrometry (GC/MS) measurements of organic contaminants.

PQLs are usually determined through interlaboratory studies of the analytical methods. In the absence of rigorous interlaboratory studies, the Agency has estimated PQLs to be from approximately 3 to 10 times the MDL. Based on data submitted by a number of EPA laboratories which have routinely conducted Method 8290, the MDL for 2,3,7,8–TCDD is generally below 5 ppt for solids and 40 ppq for wastewaters. Using a factor of three to determine the resultant PQL, most highly qualified laboratories should be able to achieve PQLs for 2,3,7,8–TCDD of 15 ppt for solids and 120 ppq for wastewaters. The Agency believes these PQLs are also appropriate for all tetra- and pentachlorinated dibenzo-p-dioxins and dibenzofurans (TCDFs and PeCDFs), while PQLs for the hexachlorinated homologs (HxCCDs and HxCDFs) should be 37 ppt for solids and 300 ppq for wastewaters. The basis for the use of these low PQLs for dioxin is that the petitioned residues to be analyzed will be relatively free of interferences due to the incineration process.

Revised Condition

In response to public comment, the condition has been modified as follows:

Condition (6): Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo- p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels must be less than 2 ppq for the wastewaters and less than 5 ppt for the solid treatment residues. Any residues with a detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters.

vi. *Condition (7)—Termination Provision and Data Submittal Requirements.* Several commenters approved of the concept of termination of the verification testing after an appropriate demonstration. One commenter suggestd that the Agency develop a statistical approach to determine the appropriate time to stop testing. The Agncy agrees that upfront exclusions for certain wastes (specifically, wastes that are variable) may require a different type of termination provision since analytical data from four consecutive batches may not be representative of constituent variability within the total waste volume. Syntex, however, made an adequate demonstration that the untreated sludge is uniform and the Agency therefore determined that the minimum number of samples specified in 40 CFR 260.22(h) (i.e., four) would be adequate to support the termination provision with the cavet that the four samples (of each residue) be taken from consecutive batches and all samples pass the delisting criteria.

In response to public comment, proposed Condition (6) has been modified to include the termination language which was originally incorporated as part of proposed Conditions (4) and (5), and to apply to Conditions (2), (3), and (4) (which discuss testing requirements for the EP toxic metals, nickel, and cyanide and have been modified and added), to provide for termination upon demonstration of four consecutive clean batches. While Syntex has not substantiated the abuse of these metals and cyanide in the waste to be incinerated, the Agency believes that the verification testing required will be adequate to insure that the incineration residues will not contain hazardous levels of these substances. If hazardous levels are in fact detected, continuous testing would be necessary and all hazardous batches would need to be retreated or disposed in accordance with Subtitle C.

Revised Condition

Condition (7): (A) The test data from Conditions (1), (2), (3), (4), (5) and (6) must be kept on file by Syntex for inspection purposes and must be compiled, summarized, and submitted to the Section Chief, Variances Section, PSPD/OSW (WH–563), US EPA, 401 M Street, S.W., Washington, D.C. 20460 by certified mail on a monthly basis and when the treatment of the lagoon sludge is concluded. All data submitted will be placed in the RCRA docket.

(B) The testing requirements for Conditions (2), (3), (4), (5), and (6) will continue until Syntex provides the Section Chief, Variances Section, with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Section Chief, Variances Section, notifies Syntex that the conditions have been lifted.

vii. *Condition (8)—Certification Provisions.* No comments were received on proposed Condition (7) and no modifications were made except to renumber it as Condition (8).

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the incineration residues from the treatment of the Syntex lagoon sludge, when subject to the verification testing requirements specified in the exclusion, should be removed from hazardous

waste control. The Agency, therefore, is granting a conditional final exclusion to Syntex Agribusiness, Inc. for the incineration residues generated from the treatment of lagoon sludge from Syntex's Springfield, Missouri site in the EPA Mobile Incineration System. These wastes are listed as EPA Hazardous Waste No. F020 and will be generated at the Denney Farm site in McDowell, Missouri. The exclusion remains in effect unless the wastes or waste volumes vary from those described in the petition, proposal, and this notice. The facility would require a new exclusion if the treatment process is altered, and accordingly would need to file a new petition. The facility must treat any such wastes as hazardous unless and until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation and the fact that a 6-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA, regulaory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*ie.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Date: May 26, 1988.

Jeffery Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following waste stream in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • • • •
Syntex Agribusiness	Springfield, MO	Kiln ash, cyclone ash, separator sludge, and filtered wastewater (except spent activiated carbon) (EPA Hazardous Waste No. F020 generated during the treatment of wastewater treatment sludge by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri after June 2, 1988, so long as: (1) The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, Syntex must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (6), regardless of whether or not the demonstration in Condition (7) has been made.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed according to SW-846 methodologies. (3) One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the following maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Maximum Allowable Solids Treatment Residue EP Leachate Concentrations (mg/L) Arsenic—1.6 Barium—32 Cadmium—0.32 Chromium—1.6 Lead—1.6 Mercury—0.065 Nickel—16 Selenium—0.32 Silver—1.6 Cyanide—6.5 (4)—If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in Condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized, the analyses required in this condition supercede the analyses required in Condition (3).) (5) Syntex must generate, prior to disposal of residues, verification data from each eight hour run from each treatment residue (*i.e.*, kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed according to SW-846 methodologies. Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Maximum Allowable Wastewater Concentrations (ppm): Benz(a)anthracene—1×10^{-4} Benzo(a)pyrene—4×10^{-5} Benzo(b)fluoranthene—2×10^{-4} Chloroform—0.07 Chrysene—0.002 Dibenz(a,h)anthracene—9×10^{-6} 1,2-Dichloroethane—0.06 Dichloromethane—0.06 Indeno(1,2,3-cd)pyrene—0.002 Polychlorinated biphenyls—1×10^{-4} 1,2,4,5-Tetrachlorobenzene—0.13 2,3,4,6-Tetrachlorophenol—12 Toluene—120 Trichloroethylene—0.04 2,4,5-Trichlorophenol—49 2,4,6-Trichlorophenol—0.02 Maximum Allowable Solid Treatment Residue Concentrations (ppm): Benz(a)anthracene—1.1 Benzo(a)pyrene—0.43 Benzo(b)fluoranthene—1.8 Chloroform—5.4 Chrysene—170 Dibenz(a,h)anthracene—0.083 Dichloromethane—2.4 1,2-Dichloroethane—4.1 Indeno(1,2,3-cd)pyrene—330 Polychlorinated biphenyls—0.31 1,2,4,5-Tetrachlorobenzene—720 Trichloroethylene—6.6 2,4,6-Trichlorophenol—3.9

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels for wastewaters must be less than 2 ppq and less than 5 ppt for the solid treatment residues. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachloronated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters. (7)(A) The test data from Conditions (1), (2), (3), (4), (5) and (6) must be kept on file by Syntex for inspection purposes and must be compiled, summarized, and submitted to the Section Chief, Variances Section, PSPD/OSW (WH-563), US EPA, 401 M Street, S.W., Washington, D.C. 20460 by certified mail on a monthly basis and when the treatment of the lagoon sludge is concluded. All data submitted will be placed in the RCRA docket. (B) The testing requirements for Conditions (2), (3), (4), (5), and (6) will continue until Syntex provides the Section Chief, Variances Section, with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Section Chief, Variances Section, notifies Syntex that the conditions have been lifted. (8) Syntex must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 88-12362 Filed 6-1-88; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 566

[Docket No. 71.1; Notice 3]

Manufacturer Identification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects two citation references in 49 CFR Part 566, *Manufacturer Identification.* Part 566 requires motor vehicle and motor vehicle equipment manufacturers to supply NHTSA with information identifying themselves, and describing their products.

DATES: This correction is effective June 2, 1988.

FOR FURTHER INFORMATION CONTACT: John F. Tilghman, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street NW., Washington, DC, 20590, (202) 366-2992.

SUPPLEMENTARY INFORMATION: On November 2, 1971, NHTSA published a final rule adding Part 566, *Manufacturer Identification,* to title 49 of the Code of Federal Regulations (CFR). (36 FR 20977, November 2, 1971.) This Part requires a manufacturer of motor vehicle or motor vehicle equipment to supply NHTSA with information identifying the manufacturer, and describing its products.

It has come to the agency's attention that § 566.6 incorrectly refers to § 566.4 in two instances. In the first instance, there is a reference to manufacturers required to submit information under § 566.4. In the second instance, there is a reference to information specified under paragraphs (a) through (c) of § 566.4. In both instances, the correct reference is § 566.5, not § 566.4.

These technical corrections to Part 566 impose no new duties or obligations on any party, nor alter existing ones. Making these amendments simply ensures that the public will have a correct copy of Part 566 requirements. For the preceding reasons, NHTSA finds that notice and comment on this correction notice are unnecessary, and that there is good cause for making the amendments effective in less than 30 days.

Therefore, 49 CFR 566.6 is amended as follows:

PART 566—[AMENDED]

1. The authority citation for Part 566 continues to read as follows:

Authority: Secs. 112 and 119, National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1401 and 1407); delegation of authority at 49 CFR 1.50.

2. Section 566.6 is amended as follows:

§ 566.6 Submittal of information.

In § 566.6, remove internal references to "§ 566.4" and add in its place, "§ 566.5."

Issued on May 26, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-12320 Filed 6-1-88; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482-8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces an inseason adjustment to the recreational ocean salmon management measures in the subarea from the Queets River to Klipsan Beach, Washington. The adjustment modifies the southern boundary of this subarea (currently at

Klipsan Beach) to Leadbetter Point, Washington, during July 3–10, 1988. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries (WDF), and the Oregon Department of Fish and Wildlife (ODFW), that the adjustment is necessary to prevent a shift in fishing effort into this subarea and to prolong the recreational fishery. This action is intended to maximize the harvest of chinook and coho salmon in this subarea without exceeding the ocean share of chinook salmon allocated to the recreational fishery.

EFFECTIVE DATE: Effective on May 27, 1988. Comments on this adjustment will be received until June 13, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1988 were effective on May 1, 1988 (53 FR 16002, May 4, 1988). The 1988 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. From the U.S.-Canada border to the Queets River, Washington (northern subarea) and from the Queets River to Klipsan Beach, Washington (central subarea), the season will open on July 3. From Klipsan Beach to Cape Falcon, Oregon (southern subarea), the season will open on July 11. The seasons in all three subareas will continue through the earliest of September 5, attainment of subarea coho quotas, or attainment of an overall quota of 29,800 chinook salmon for the area between the U.S.-Canada border to Cape Falcon, Oregon.

A shift in fishing effort of vessels that normally operate in the southern subarea into the central subarea is anticipated during July 3–10, the period when the central subarea is open and the southern subarea is still closed. According to the best available information, this increase in fishing effort could likely result in earlier closure of the recreational fishery north of Cape Falcon due to a more rapid attainment of the overall chinook quota, with a large portion of the quota of 50,000 coho salmon for the central subarea remaining unharvested. By moving the southern boundary of the central subarea, which is currently at Klipsan Beach, northward to Leadbetter Point, Washington, the shift in fishing effort should be prevented. This boundary modification is intended to prolong the recreational fishery and to maximize the available harvest of chinook and coho salmon in the central subarea as established in the preseason announcement of the 1988 management measures.

Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the exclusive economic zone (EEZ) from the Queets River to Klipsan Beach, Washington, by modifying the southern boundary of this subarea (currently at Klipsan Beach) to Leadbetter Point, Washington (46°38'10" North latitude) from 0001 hours local time July 3, 1988 through 2400 hours local time July 10, 1988. The closure from 6 to 200 nautical miles of shore remains in effect (53 FR 16002). Beginning at 0001 hours on July 11, 1988, the southern boundary of the central subarea will again be at Klipsan Beach (46°28'12" North latitude).

This notice must be issued as soon as possible to provide immediate notification to fishermen and charter boat operators and to prevent scheduling difficulties or inopportune charter trip bookings. The Secretary has determined, therefore, that good cause exists to issue this notice immediately without affording a prior opportunity for public comment. Therefore, this notice is effective on the date of filing for public inspection with the Office of the Federal Register. Public comments on this notice will be received at the above address for a period of 15 days after the effective date.

Federal regulations at § 661.21(b)(1)(v) authorize the modification of management boundaries if certain findings are made as described in the appendix to 50 CFR Part 661, Section III.B. Accordingly, the Regional Director has determined this inseason adjustment is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the ocean salmon fishery management plan as revised by the emergency rule implementing the 1988 management measures. This inseason adjustment is based on consideration of the predicted sizes of salmon runs, harvest quotas, and hooking mortality limits for the area and total allowable impact limitations, and predicted fishing effort for the area to the end of the scheduled season.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, WDF, and ODFW regarding an adjustment of the recreational fishery between the Queets River and Klipsan Beach, Washington. The representative of WDF confirmed that Washington will manage the recreational fishery in state waters adjacent to this subarea of the EEZ in accordance with this federal action.

Other Matters

This action is authorized by § 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–12421 Filed 5–27–88; 4:57 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 106
Thursday, June 2, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 928

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 905 and 928 (oranges, grapefruit, tangerines, tangelos (Florida), and papayas (Hawaii) for the 1988–89 fiscal year established for each order. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture (USDA) for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Funds to administer these programs are derived from assessments on handlers

DATE: Comments must be received by June 13, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 447–3918.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order Nos 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; and 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos, and 122 handlers of Hawaiian papayas subject to regulations under their respective orders, and approximately 13,000 Florida oranges, grapefruit, tangerine and tangelo producers, and 344 Hawaiian papaya producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Citrus Administrative Committee met on May 3, 1988, and unanimously recommended 1988–89 marketing order expenditures of $190,000 and an assessment rate of $0.003 per 4/5 bushel carton of fresh oranges, grapefruit, tangerines, and tangelos shipped under M.O. 905. In comparison, 1987–88 fiscal year budgeted expenditures were $239,375 and the assessment rate is $0.00375 per 4/5 bushel carton. Most of the expenditure categories in the 1988–89 budget are for program administration. Assessment income for 1988–89 is expected to total $186,000, based on shipments of 62,000,000 cartons (4/5 bushel) of oranges, grapefruit, tangerines, and tangelos.

Interest income will amount to approximately $4,000.

The Papaya Administrative Committee met on April 20, 1988, and unanimously recommended 1988–89 marketing order expenditures of $743,360 and an assessment rate of $0.007 per pound of fresh papayas. In comparison, 1987–88 fiscal year budgeted expenditures were $628,140 and the assessment rate was $0.007 per pound. Major expenditure categories in the 1988–89 budget are $350,000 for advertising and promotion and $60,000 for research, with most of the remainder for program administration. Total income for 1988–89 is expected to amount to $743,360, with assessment income at $476,000 based on shipments of 68,000,000 pounds of papayas. Additional estimated income includes $150,000 from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, and $54,000 from miscellaneous sources.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budgets and assessment rate approvals for these programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 905 and 928

Marketing agreements and orders, Oranges, Grapefruit, Tangerines, Tangelos (Florida), Papayas (Hawaii).

For the reasons set forth in the preamble, it is proposed that new §§ 905.227 and 928.218 be added as follows:

1. The authority citation for 7 CFR Parts 905 and 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 905.227 and 928.218 are added to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.227 Expenses and assessment rate.

Expenses of $190,000 by the Citrus Administrative Committee are authorized, and an assessment of $0.003 per 4/5 bushel carton of assessable fruit is established for the fiscal year ending July 31, 1989. Unexpended funds may be carried over as a reserve.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.218 Expenses and assessment rate.

Expenses of $743,360 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.007 per pound of assessable papayas is established for the fiscal year ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: May 26, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–12267 Filed 6–1–88; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed revisions to regulation.

SUMMARY: The NCUA Board is proposing to revise Part 704 (Corporate Credit Unions) of its Rules and Regulations. The proposal, which is intended to clarify the regulation, results from NCUA's policy to periodically review each of its regulations. The proposed changes are to the following sections: Section 704.2 includes a definition of "average daily assets" in the regulation. Section 704.3 clarifies items that may be excluded from the assets prior to the reserve transfer computation. Section 704.5 specifies that the annual CPA audit be an opinion audit.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Linda K. Groth, Corporate Credit Union Specialist, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

Part 704 of NCUA Rules and Regulations, Corporate Credit Unions, was promulgated in 1977 to define a corporate credit union and to establish reserve account for corporate credit unions. The regulation was revised in 1979 and again in 1984 to provide additional requirements pertaining to operations of corporate credit unions. The NCUA Board, in its recent review of the regulation, has determined some minor amendments to the regulations may be appropriate. The following section-by-section analysis describes the proposed changes to the regulation. The NCUA Board requests comment on the proposed changes and any other suggestion modifications to the regulation.

Section-By-Section Analysis

Proposed Section 704.1 Scope.

This section, which has not been modified, states that special rules and authorities have been implemented for corporate credit unions. Section 120(a) of the Federal Credit Union Act provides such authority to the NCUA Board. This section also identifies that state chartered federally insured corporates are covered by § 704.3—Corporate Reserves.

Section 704.2 Definitions.

Paragraphs (a), (b) and (c) have not been changed. Paragraph (a) states the purpose of Corporate Federal credit unions and the criteria for defining a credit union as a Corporate Federal credit union. Paragraph (b) sets forth which federally insured state chartered corporate credit unions must comply with the Corporate Reserve section of this regulation. Paragraph (c) defines "Undivided Earnings" in a corporate credit union. Paragraph (d) defining "Average Daily Assets" is being added to clarify the definition of average daily assets for reserve computation purposes in § 704.3. Corporate credit unions may elect either of two methods of calculating average daily assets. This is not a new requirement. The definition was formerly included only in the preamble to the regulation.

Section 704.3 Corporate reserve.

This section concerns establishment and maintenance of a corporate reserve against loan and certain investment losses. It is proposed to clarify the definition of assets for the purpose of computing reserve transfers. Subtraction of Central Liquidity Facility (CLF) stock subscriptions and reverse repurchase

transactions, under the program developed by U.S. Central Credit Union and the corporate network, from assets stated on the balance sheet prior to computing reserve transfers was included in the preamble to the regulation. It is now being included in the regulation as a clarification. CLF stock subscriptions are pass-through entries from U.S. Central Credit Union as part of the agent group membership in the CLF. Reverse repurchase transactions on behalf of the members of a corporate credit union using the U.S. Central Credit Union/corporate network program have been given a previous exemption. The corporate credit unions act primarily as a pass-through to forward the securities to U.S. Central Credit Union. The principal risks and primary benefits are shared by U.S. Central Credit Union and the natural person credit unions that own the securities. NCUA does not intend this specific exemption to become a precedent for all reverse repurchase transactions. The NCUA Board believes that, generally, reverse repurchase transactions are financing arrangements that can and do involve factors that should be subject to standard reserve requirements.

Section 704.4 Representation.

This section, which has not been changed, provides that any representative of a member organization is eligible to be elected as an official to the corporate credit union.

Section 704.5 Annual audit.

This section requires an annual audit of each Corporate Federal credit union by an independent, licensed CPA. It is clarified in the proposal by changing "annual audit" to "annual opinion audit" by an independent, duly licensed CPA, as was the intent of this section of the regulation.

Section 704.6 Programs and services.

The purpose of this section is to grant Corporate Federal credit unions the power to offer innovative programs and services to their members in the areas of investments, liquidity management, payment systems and correspondent services subject to applicable provisions of law, regulation, bylaws and any orders of the NCUA Board. To clarify this section of the regulation, the reference to section 120(a) of the Federal Credit Union Act does not expand the authority of Corporate Federal credit unions in the area of programs and services. The NCUA Board has the power to grant additional authority and may, at some later date, do so through regulation. Programs involving the four activities incidental to the operation of corporate credit unions must still satisfy safety and soundness concerns of the NCUA Board. It is the responsibility of the officials of each corporate credit union, prior to implementation of a new service, to perform a review to ensure that the above requirements are met. Otherwise, the NCUA Board has purposely determined not to impose regulatory detail. Because technology, regulation and various financial groupings and networks are all changing rapidly, the staff believes corporate credit unions can be most responsive in a dynamic environment with the approach outlined above rather than with a specifically authorized list. In the event questions do arise about new services or programs, NCUA is ready and willing to review any proposed activity for legality prior to implementation.

Section 704.7 Prepayment penalties.

There are no changes on this portion of the regulation which specifies the conditions under which a Corporate Federal credit union may assess prepayment penalties on loans.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because all corporate credit unions have assets of at least $1,000,000. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

Section 704.3 of the proposed regulation (corporate reserve requirements) is applicable to corporate federally insured state chartered credit unions (Corporate FISCU's). This is not a new requirement. Corporate FISCU's must reserve according to § 704.3 only if their state law requires lower reserves or allows for charges to reserves other than loan and investment losses provided by § 704.3. NCUA has imposed this requirement on Corporate FISCU's as a condition of National Credit Union Share Insurance Fund Coverage. The Provision has previously been subject to public notice and comment.

List of Subjects in 12 CFR Part 704

Corporate Credit Unions.

By the National Credit Union Administration Board on May 20, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

It is proposed that Part 704 be revised to read as follows:

PART 704—CORPORATE CREDIT UNIONS

Sec.

704.1 Scope.
704.2 Definitions.
704.3 Corporate reserve.
704.4 Representation.
704.5 Annual audit.
704.6 Programs and services.
704.7 Prepayment penalties.

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

§ 704.1 Scope.

This part establishes certain special rules applying to Corporate Federal credit unions and grants certain additional authorities to such credit unions. Section 704.3—Corporate Reserve—has applicability to both Corporate Federal credit unions and federally insured state-chartered corporate credit unions.

§ 704.2 Definitions.

(a) "Corporate Federal credit union" means a Federal credit union:

(1) That is operated primarily for the purpose of serving other credit unions and

(2) Whose total dollar amount of outstanding loans to member credit unions plus shares issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares.

(b) For purposes of § 704.3, a federally insured state-chartered credit union shall be deemed a federally insured state-chartered corporate credit union when its total dollar amount of outstanding loans to member credit unions plus shares and deposits issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares and deposits.

(c) "Undivided earnings" means all forms of retained earnings except

Corporate Reserves (or regular or statutory reserves, as applicable) and, except for valuation allowances established to meet full and fair disclosure requirements of § 702.3.

(d) "Average daily assets" means the daily average of assets calculated on the basis of assets at the beginning and end of the period or, if available, on assets at the close of each day in the period.

§ 704.3 Corporate reserve.

(a) This section concerns the establishment and maintenance of a corporate reserve against loan losses and certain investment losses. For Corporate Federal credit unions, this section applies in lieu of § 702.2 of NCUA's regulations (12 CFR 702.2). For federally insured state-chartered corporate credit unions, this section applies to the extent that applicable state law and regulations:

(1) Require the transfer of a lesser amount to reserves for loan and investment losses than this section or

(2) Allow charges to reserves for other than loan and investment losses as permitted by this section.

(b) At the end of each dividend cycle and prior to paying a dividend (or, at the option of the credit union, on a monthly basis if dividends are paid more frequently than monthly), sums shall be set aside in a Corporate Reserve in accordance with the following schedule:

(1) When the credit union's Corporate Reserve and undivided earnings are less than 2 percent of assets, less Central Liquidity Facility (CLF) stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(2) When the Corporate Reserve and undivided earnings are equal to or greater than 2 percent but less than 4 percent of assets, less CLF stock subscriptions and reverse repurchase transactions through U.S. Central Credit Union, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365.

(c) Charges may be made to the Corporate Reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. No other charges shall be made except as may be authorized in writing by the NCUA Board or its designee. Charges shall be made in accordance with full and fair disclosure requirements as described in the Accounting Manual for Federal Credit Unions.

§ 704.4 Representation.

An organizational member (i.e., a member other than a natural person) of a Corporate Federal credit union may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend meetings, to vote and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same Corporate Federal credit union.

§ 704.5 Annual audit.

(a) The supervisory committee of a Corporate Federal credit union shall cause an annual opinion audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 30 days after receipt by the board of directors.

§ 704.6 Programs and services.

Pursuant to section 120(a) of the Federal Credit Union Act (12 U.S.C. 1766(a)), and subject to other applicable provisions of law, regulation, bylaws, and any orders of the NCUA Board, a Corporate Federal credit union may provide, to its members, services involving investments, liquidity management, payment systems and correspondent services.

§ 704.7 Prepayment penalties.

If provided for in the loan contract, a Corporate Federal credit union is authorized to assess prepayment penalties on loans made at fixed rates and for specified maturities to member credit unions or other organizations.

[FR Doc. 88-12374 Filed 6-1-88; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-88-4]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 1, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 24, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of petition
25591	United States Ultralight Association, Inc	Part 103	To amend the regulations for powered, fixed-wing ultralight vehicles in order to modify the definition; to establish mandatory airman certification, vehicle registration and marking; and, in the case of two-place ultralights, to establish standards for pilot's knowledge, experience, medical fitness; and for the airworthiness of the vehicle.

[FR Doc. 88-12317 Filed 6-1-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-ASW-19]

Proposed Change to Time of Designation for Restricted Area R-6312; Cotulla, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the time of designation of Restricted Area R-6312 Cotulla, TX, by adding the statement "other times by NOTAM" to the existing published hours. This provision would enable use of R-6312 for nighttime fighter training missions.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-19, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Headquarters, AFSC/DEMV, Andrews AFB, MD 20334-5000; telephone: (301) 981-2663. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to permit expanded use of R-6312 by adding the provision "other times by NOTAM" to the current published time of designation. Training scenarios for the fighter units utilizing R-6312 have become highly sophisticated and one scenario used by two of these units requires that the entire mission be flown at night. The existing R-6312 time of designation is listed as "sunrise to sunset" which prevents any nighttime activity in the area. Because of this limitation, flight crews must use restricted areas located outside the state of Texas. By designating R-6312 for use after sunset, fighter units based at Kelly Air Force Base and Bergstrom Air Force Base could complete all required night training locally, resulting in annual savings approaching one million dollars in fuel and travel costs alone.

If designated for use after sunset, it is projected that R-6312 would be used approximately three nights per week, two hours per night. Procedures have been refined to maintain very precise scheduling control of the area and to release the airspace to Houston Air Route Traffic Control Center when not required for military training. The U.S. Navy has installed a VHF radio site at R-6312 which allows nonparticipating pilots to receive absolute real-time status information about the area. Section 73.63 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.63 [Amended]

2. Section 73.63 is amended as follows:

R-6312 Cotulla, TX [Amended]

By removing the current time of designation and substituting the following:

Time of designation. Sunrise to sunset; other times by NOTAM.

Issued in Washington, DC, on May 25, 1988.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-12316 Filed 6-1-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 88-ASW-11]

Proposed Alteration of Jet Route J-17

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to alter the description of Jet Route J-17 located in the vicinity of Abilene, TX. The FAA proposed to realign J-17 by adding a west dogleg between Abilene and San Antonio, TX. This action would provide increased safety by providing improved course guidance in the vicinity of Brownwood, TX, Military Operations Area (MOA).

DATE: Comments must be received on or before July 15, 1988.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 88-ASW-11, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J-17 via a west dogleg between Abilene and San Antonio. The Fort Worth Air Route Traffic Control Center has requested the alteration to provide improved course guidance in that area, thereby increasing safety in the vicinity of the Brownwood MOA. This action would enhance safety by adding a dogleg in an area where military activity is concentrated. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–17 [Amended]

By removing the words "via Abilene, TX;" and substituting the words "INT San Antonio 323°T(315°M) and Abilene, TX, 180°T(170°M) radials; Abilene;"

Issued in Washington, DC, on May 19, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–12315 Filed 6–1–88; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 881–0076]

American Stores Co. et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that American Stores Company, a Dublin, California corporation, that operates supermarkets, divest, in each of certain areas of California, or either (1) a store or stores acquired by American from Lucky Store, Inc.; or (2) a store or stores currently operated by American.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum FTC/S–3302, Washington, DC 20580. (202) 326–2629.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14).

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

Agreement Containing Consent Order

In the matter of American Stores Co., a corporation and Alpha Beta Acquisition Corp., a corporation.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of common stock of Lucky Stores, Inc. ("Lucky") by Alpha Beta Acquisition Corporation, a wholly-owned subsidiary of American Stores Company (hereinafter collectively "American"), and it now appearing that American is willing to enter into an Agreement Containing a Consent Order ("Agreement") to divest certain assets and cease and desist from certain acts:

It is hereby agreed by and between American, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Lucky is a corporation organized and existing under the laws of the State of Delaware, with its executive offices located at 6300 Clarke Avenue, Dublin, California 94568.

2. American Stores Company, which owns 100 percent of the voting securities and controls Alpha Beta Acquisition Corporation, is a corporation organized and existing under the laws of the State of Delaware with its executive offices located at 444 East 100 South, Salt Lake City, Utah 84111.

3. Alpha Beta Acquisition Corporation is a corporation organized and existing under the laws of the State of Delaware with its executive offices located at 19100 Von Karman, Irvine, California 92715.

4. American has been furnished with a draft complaint, here attached, that the Bureau of Competition will present to the Commission for its consideration, which, if issued by the Commission, would charge American with violations of the Clayton Act and Federal Trade Commission Act.

5. American admits all jurisdictional facts set forth in the attached draft of the complaint.

6. American waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

7. This agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify American, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by American that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to American, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to American Stores Company's address as stated in this agreement shall constitute service. American waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. American has read the proposed complaint and order contemplated hereby. American understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. American further understands that it may be liable for civil penalties in the amount

provided by law for each violation of the order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

(a) "American" means American Stores Company, its parents, subsidiaries (including Alpha Beta Acquisition Corporation), divisions, and groups controlled by American and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(b) "Lucky" means Lucky Stores, Inc., its parents, subsidiaries, divisions and groups controlled by Lucky and their respective directors, officers, employees, agents and representative and their respective successors and assigns.

(c) "Acquisition" means American's acquisition of the issued and outstanding common stock of Lucky.

(d) "California Operation" means the 362 grocery stores of Lucky located in California or Nevada, inventory, trademarks and trade names, warehouse distribution and manufacturing facilities and all related property and facilities.

(e) "Retail grocery store" means any full-line retail food store of 10,000 or more square feet and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits) and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

(f) "Assets to be divested" means the assets described in Paragraph II (A), also known as "II (A) properties."

(g) "To be acquired store" means any retail grocery store in the California Operation.

(h) "Commission" means the Federal Trade Commission.

(i) "Eagle Food Centers, L.P." means Eagle Food Centers, L.P., a Delaware limited partnership.

(j) "Odyssey Partners" means Odyssey partners, a New York limited partnership.

II

It is ordered that:

(A) If American acquires a majority (more than 50%) of the outstanding voting shares of Lucky, American shall, within six (6) months from the date this Order becomes final, divest, absolutely and in good faith,

(1) Either a to be acquired store or a grocery store presently operated by American in each of Camarillo, California; Cathedral City, California; Fallbrook, California; Indio or Coachella, California; La Mesa, California; Lemon Grove, California; Mill Valley or San Refael, California; Novato, California; Petaluma, California; Point Loma, California; Santa Barbara, Montecito or Goleta, California; Santee, California; Spring Valley, California; and in the area south of Chula Vista, California and north of the Mexican border; and

(2) Two grocery stores, either or both of which may be a to be acquired store or a grocery store presently operated by American, in the area that includes the cities and towns of Canyon County, Newhall, Saugus and Valencia, California; and

(3) Three stores, any or all of which may be a to be acquired store or a grocery store presently operated by American, in the area of San Mateo County, California from and including San Mateo to Menlo Park; and

(4) Six stores, any or all of which may be a to be acquired store or a grocery store presently operated by American, in Alameda County, California north of the Santa Clara County line up to and including San Leandro, California; and

(5) Grocery stores with aggregate average weekly sales in 1987 of $1.8 million, any or all of which may be a to be acquired store or a grocery store presently operated by American, in Santa Clara County, California

(such stores are hereinafter referred to as the II(A) properties). The II(A) properties are to be divested only to an acquiror or acquirors, and ony in such manner, that receives the prior approval of the Commission.

The Agreement to Hold Separate, attached hereto as Appendix A and made a part hereof, shall continue in effect until such time as such stores have been divested, and American shall comply with all terms of said agreement. The purpose of the divestiture of such stores is to ensure their continuation as ongoing, viable enterprises engaged in the same business in which they are presently engaged and to remedy the lessening of competition alleged in the Commission's complaint.

Within ten (10) days of obtaining control of Lucky's board of directors, American also shall cause Lucky to sell to Odyssey Partners Lucky's entire common limited partnership interest in Eagle Food Centers, L.P.

(B) If American acquires less than a majority (50% or less) of the outstanding voting shares of Lucky, American shall divest on the New York Stock Exchange or in privately negotiated transactions absolutely and in good faith all its interest in such shares within six (6) months from the date this Order becomes final. Pending such divestiture, American shall not, directly or indirectly, (i) exercise dominion or control over, or otherwise seek to influence, the management, direction, or supervision of the business of Lucky, (ii) seek or obtain representation on the Board of Directors of Lucky, (iii) exercise any voting rights attached to the shares, (iv) seek or obtain access to any confidential or proprietary information of Lucky, or (v) take any action or omit to take any action in a manner that would be incompatible with the status of American as a passive investor in Lucky. If American acquires less than a majority (50% or less) of the outstanding voting shares of Lucky, American shall be bound by only Parts II(B), VII and IX of this Order.

III

It is further ordered that within ten (10) days of obtaining control of Lucky's board of directors American will appoint Arthur Andersen & Co. ("A.A."), or such other person as the Commission may approve, who will receive, in the place and stead of Lucky, any information which might otherwise be given by Eagle Food Centers, L.P. ("EFCLP") and said person shall provide to American only that information necessary to prepare public filings or tax returns, or evaluate the terms of the sale of such interest. In no event will such information be other than historical in natute and in no event will such information relate to EFCLP's pricing or marketing practices or expansion plans.

Within ten (10) days of obtaining control of Lucky's board of directors American will cause Lucky to waive any right to serve on any advisory board of EFCLP or otherwise have access to the books and records of EFCLP. Nothing herein contained shall present A.A., or such other person, from providing to American such information as may be necessary to inform American as to the value of its interest in EFCLP, nor shall anything contained herein prevent A.A., or such other person, from providing requested information to third party purchasers of Lucky's interest in EFCLP. In no event will such information be other than historical in nature and in no event will such information relate to EFCLP's pricing or marketing practices or expansion plans.

Within ten (10) days of obtaining control of Lucky's board of directors American will also cause Lucky to notify EFCLP of Lucky's intention to terminate Lucky's obligations under the Management Information Services Agreement (the "MIS Agreement")

entered into between Lucky and EFCLP on November 10, 1987.

Pending termination of the MIS Agreement, no information delivered by EFCLP to Lucky for processing pursuant to the terms of the MIS Agreement shall be disclosed or otherwise made available except to those employees of Lucky as shall be necessary for Lucky to perform its obligations under the MIS Agreement. No information delivered by EFCLP to Lucky under the MIS Agreement shall be disclosed or otherwise made available to officers or employees of American or any of its affiliates (other than to employees of Lucky in accordance with the first sentence of this paragraph). American shall provide written notice to the Lucky employees who will receive or have access to the information provided to Lucky by EFCLP pursuant to the MIS Agreement that such information may not be disclosed or made available to any person except in accordance with the terms of this Order.

IV

It is further ordered that, pending divestiture, American shall maintain the viability and marketability of the II(A) properties and shall not cause or permit the destruction, removal or impairment of any assets or business of the II(A) properties except in the ordinary course of business and except for ordinary wear and tear.

V

It is further ordered that the II(A) properties shall not be divested, directly or indirectly, to anyone who is at the time of the divestiture an officer, director, employee or agent of, or under the control, direction or influence of American.

VI

It is further ordered that:

(A) If American has not divested the II(A) properites within the six month period from the date the Order becomes final, American shall consent to the appointment of a trustee by the Commission to divest the II(A) properties. In the event that the Commission brings an action pursuant to section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), or any other statute enforced by the Commission, American shall consent to the appointment of a trustee to divest the II(A) properties. The appointment of a trustee shall not constitute a waiver by the Commission of its right to seek civil penalties and other relief available to it for any violation of this Order.

(B) If a trustee is appointed by a court or the Commission pursuant to Part VI(A) of this Order, American shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of America, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have the power and authority to divest the II(A) properties that have not been divested by American within the time period for divestiture in Part II. The trustee shall have nine (9) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the nine-month period the trustee has submitted a plan of divesture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court for a court-appointed trustee; provided, however, that the Commission, or the court for a court-appointed trustee, may only extend the divestiture period two (2) times.

3. If, at the end of the divestiture period as extended pursuant to paragraph VI(B)(2) above, the trustee has not secured approval of divestiture as required by paragraph II(A), the trustee may, if the Commission determines in order to accomplish the divestiture, add such other assets as are required to effectuate the divestiture of the II(A) properties.

4. The trustee shall have full and complete access to the personnel, books, records and facilities of American and Lucky. American shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. American shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

5. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to American's absolute and unconditional obligation to divest at no minimum price and the purposes of this divestiture as stated in Part II.

6. The trustee shall serve without bond or other security at the cost and expense of American on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to retain at the cost and expense of American such consultants, accountants, attorneys, business brokers, appraisers and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission or the court of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to American and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the II(A) properties. Nothing herein shall be construed to limit the trustee's compensation to an amount not in excess of monies derived from the sale.

7. Within fifteen (15 days) after appointment of the trustee and subject to the approval of the Commission and, if the trustee was appointed by a court, subject also to the prior approval of the court, American shall execute a trust agreemet that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the II(A) properties.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as in Part VI.

9. The trustee shall report in writing to American and the Commission every sixty (60) days from the date the trust agreement is executed concerning the trustee's efforts to accomplish divestiture.

VII

It is furthered ordered that, within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with Part II of this Order, American shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision. American shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of the II(A) properties, including the identity of all parties contacted. American also shall include in compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

VIII

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, American shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, (i) five or more retail grocery stores, within any one year period from the date this Order becomes final, including any facilities that have been operated as a retail grocer store(s) within six months of the date of the offer to purchase the facilities, or any interest in five or more retail grocery stores or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates five or more retail grocery stores, in Los Angeles and Orange Counties, California (excluding those cities and towns identified in subsection (iii) of this Part VIII), or (ii) two or more retail grocery stores, within any one year period from the date this Order becomes final, including any facilities that have been operated as a retail grocery storer(s) within six months of the date of the offer to purchase the facilities, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates two or more retail grocery stores, in the Bay Area comprised of the following cities or towns:

Alameda, California
Albany, California
Belmont, California
Benicia, California
Berkeley, California
Burlingame, California
Campbell, California
Castro Valley, California
Cupertino, California
Daly City, California
El Cerrito, California
El Sobrante, California
Emeryville, California
Foster City, California
Fremont, California
Hayward, California
Hercules, California
Los Altos, California
Los Gatos, California
Menlo Park, California
Millbrae, California
Milpitas, California
Mountain View, California
Newark, California
Oakland, California
Pacificia, California
Palo Alto, California
Pinole, California
Redwood City, California
Richmond, California
San Bruno, California
San Carlos, California
San Francisco, California
San Jose, California
San Leandro, California
San Lorenzo, California
San Mateo, California
San Pablo, California
Santa Clara, California
Saratoga, California
South San Francisco, California
Sunnyvale, California
Union City, California
Vallejo, California

or (iii) any retail grocery store, including any facility that has been operated as a retail grocery store within six months of the date of the offer to purchase the facility, or any interest in a retail grocery store or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store, in the following cities or towns:

Bakersfield, California
Camarillo, California
Canyon Country, Newhall, Saugus, or Valencia, California
Capitola, California
Cathedral City, Coachella, Indio, Palm Desert, Palm Springs, or Rancho Mirage, California
Concord, California
Danville, California
Encinitas, California
Escondido, California
Fallbrook, California
Fontana, California
Las Vegas, Nevada
Napa, California
Novato, California
Ontario, California
Oxnard, California
Palmdale or Lancaster, California
Petaluma, California
Pleasanton, California
Redlands, California
Rialto, California
Riverside, California
Salinas, California
San Bernardino, California
San Diego, California, South of the Miramar Naval Air Station
San Juan Capistrano or San Clemente, California
San Marcos, California
San Rafael, Mill Valley, Fairfax, Greenbrae, Larkspur, San Anselmo, or Sausilito, Tiburon, California
San Ramon, California
Santa Barbara, Montecito, or Goleta, California
Santa Maria, California
Santa Rosa, California
Simi Valley, California
Thousand Oaks, California
Upland, California
Vacaville, California
Vista, California
Walnut Creek, California

Provided, however, that these prohibitions shall not relate to the construction of new facilities by American or the leasing by American of facilities not presently operated as a retail grocery store in those locations.

One year from the date this Order becomes final and annually thereafter for nine (9) more years, American shall file with the Commission a verified written report of its compliance with this paragraph. Such reports shall include a listing of all acquisitions made by American without prior approval of the Commission in any area listed in this Part VIII.

IX

It is further ordered that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to American made to its principal office, American shall permit any duly authorized representative or representatives of the Commission:

(A) Access during the office hours of American and Lucky, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of American or Lucky relating to compliance with this Order;

(B) Upon five (5) days' notice to American and without restraint or interference from them, to interview officers or employees of American or Lucky, who may have counsel present, regarding any such matters.

X

It is further ordered that American shall notify the Commission at least thirty (30) days prior to any proposed change in the organization such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Dissenting Statement of Commissioner Azcuenaga

American Stores Company, File No. 881-0076

I dissent from the decision of the Commisison majority to accept for public comment from American Stores Company ("American") this proposed consent order because the order is not sufficiently broad to resolve the potential anticompetitive effects of American's acquisition of Lucky Stores,

Inc. ("Lucky"). Based on the information now available, the levels of concentration, conditions of entry, and other facts that bear on the state of competition in the supermarket industry in discrete California markets indicate that the Commission should require the divestiture of a greater number of stores to protect competition in markets in which American and Lucky now compete. I would welcome comment on the scope of the divestiture provision.

I also oppose the highly unusual and curious provision in the order in which the Commission at once takes from and returns to American its ability to reduce competition by acquiring stores in the Bay Area. Simply explained, the Order requires American to divest from 15 to 21 stores in the Bay Area (with the exact number depending on the sales volume of the divested stores) within six months, but allows American to acquire one store per year (without reference to sales volume) in the same area without prior Commission review or approval. If, as the divestiture provision implies, the majority has determined that divestiture of at least 15 stores is needed to preserve competition in the Bay Area, then the acquisisiton of another store in the same area or, as permitted under the order, the reacquisition of one of the same stores required to be divested may equally pose a competitive danger. If, however, the majority is permitting the acquisition of one store per year without prior approval because of doubts about the long-term need for this level of divestiture, then it would be simpler and more efficient simply to lower the number of stores to be divested. The Commission should not require divestiture unless it is certain that the remedy is necessary, but once it is found to be necessary, it should not be diluted. The Commission's mechanism for prior approval of future acquisitions that are competitively unobjectionable is the appropriate way to deal with future changes in circumstances.

Analysis to Aid Public Comment on Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from American Stores Company an agreement containing consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by American Stores Company ("American") of the issued and outstanding shares of Lucky Stores, Inc. ("Lucky"). American and Lucky are competitors in the operation of supermarkets in areas of California and Nevada. In addition, Lucky holds a limited partnership interest in Eagle Food Centers, L.P., which operates supermarkets in competition with American in areas of Illinois, Indiana, and Iowa. Both American and Lucky also operate various warehouses and manufacturing facilities in support of their retail operations.

The agreement containing consent order would, if issued by the Commission, settle the portions of the complaint that allege an anticompetitive effect in the retail sale of groceries by supermarkets in ten areas in California, including: Fallbrook; Santa Barbara, Montecito, and Goleta; Camarillo; South San Diego County; Santa Clarita Valley; Coachella Valley; Novato; Petaluma; San Francisco Bay Area; and the southern portion of Marin County. In addition, the consent order would settle the portions of the Complaint that allege an anticompetitive effect in the retail sale of groceries in areas in Illinois, Indiana, and Iowa.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the retail sale of groceries by supermarkets in the areas described above, and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The Order accepted for public comment contains provisions requiring the divestiture, in each of the areas described above, of either: (1) A store or stores acquired by American from Lucky; or (2) a store or stores currently operated by American. In addition, the Order requires American to sell Lucky's common interest in Eagle Food Centers, L.P., and to provide protection against the receipt by American of competitively sensitive information from Eagle Food Centers, L.P.

Under the terms of the Order, American must complete the required divestitures within six months of the date the Order becomes final. If American fails to complete the required divestitures within the six-month period, American shall consent to the appointment of a trustee, who would have nine additional months to divest the Lucky assets. After the initial nine-month period, if the trustee is not able to find purchasers for the assets, the trustee would have discretion, if the Commission finds it necessary, to sell any other assets of Lucky, up to and including all of the assets of Lucky, in order to effectuate a sale of the stores in the ten areas described above. Any proposed divestiture must be approved by the Federal Trade Commission after the divestiture proposal has been placed on the public record for reception of comments from interested persons.

For a period of ten years from its effective date, the Order would also prohibit American from acquiring, without prior Commission approval, assets of or interest in five or more retail grocery stores or any company operating five or more retail grocery stores in Los Angeles or Orange Counties, assets of or any interest in two or more retail grocery stores or any company operating two or more retail grocery stores in the San Francisco Bay Area, or assets of or any interest in any retail grocery store or any company operating a retail grocery store in numerous cities and towns in California and Nevada. Both American and Lucky operate retail grocery stores in the areas comprised of these cities and towns.

It is anticipated that the provisions of this Order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

Emily H. Rock,

Secretary.

[FR Doc. 88-12372 Filed 6-1-88; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 881-0038]

The Vons Companies et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that The Vons Companies, a El Monte, California corporation, that operates supermarkets, divest, in each of certain areas of

California, of either (1) a store or stores acquired by Vons from Safeway; or (2) a store or stores currently operated by Vons.

DATE: Comments must be received on or before August 1, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joan S. Greenbaum FTC/S–3302, Washington, DC 20580. (202) 326–2629.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Supermarkets, Trade practices.

Agreement Containing Consent Order

In the matter of The Vons Companies, Inc., a corporation, SSI Associates, L.P., a limited partnership, and Safeway Stores, Incorporated, a corporation.

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of the outstanding shares of capital stock of certain subsidiaries of SSI Associates, L.P.'s ("SSI") subsidiary Safeway Stores, Incorporated by The Vons Companies, Inc. ("Vons"), and it now appearing that SSI, Safeway Stores, Incorporated and Vons are willing to enter into an Agreement Containing Consent Order ("Agreement"), to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and among Vons, SSI and Safeway Stores, Incorporated, by their duly authorized officers, and counsel for the Commission that:

1. Safeway Stores, Incorporated is a corporation organized and existing under the laws of the State of Delaware with executive offices located at Fourth and Jackson Streets, Oakland, California 94660; and

SSI Associates, L.P., which owns 96.4 percent of the voting securities of Safeway Stores, Incorporated and controls it, is a limited partnership organized and existing under the laws of the State of Delaware with executive offices located c/o Kohlberg Kravis Roberts & Company, 101 California Street, San Francisco, California 94111 (hereinafter SSI and Safeway Stores, Incorporated will be referred to collectively as "Safeway"); and

Vons is a corporation organized and existing under the laws of the State of Michigan with executive offices located at 10150 Lower Azusa Road, El Monte, California 91731.

2. Vons and Safeway have been furnished a draft of complaint, attached hereto as Exhibit A, that the Bureau of Competition will present to the Commission for its consideration, which, if issued by the Commission, would charge Vons and Safeway with violations of section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

3. Vons and Safeway admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Vons and Safeway waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law:

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All rights under the Equal Access to Justice Act.

5. This Agreement shall not become a part of the public record unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Vons and Safeway, in which event it will take such action as it may consider appropriate, including, but not limited to, an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

This Agreement and the draft of complaint attached hereto shall be placed on the public record for a period of thirty (30) days.

6. This Agreement is for settlement purposes only and does not constitute an admission by Vons or Safeway that the law has been violated as alleged in the draft of complaint here attached.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Vons or Safeway, (a) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following Order to divest and to cease and desist from certain acts in disposition of the proceeding, and (b) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivered by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Vons and Safeway at their addresses as stated in this Agreement shall constitute service. Vons and Safeway waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Vons and Safeway have read the proposed draft of complaint and the Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one to more compliance reports showing that they have fully complied with the Order. Vons and Safeway further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

9. In the event the Order contemplated by this Agreement is not issued by the Commission within ninety (90) days of the date on which this Agreement is placed on the public record, Vons and Safeway may, at their joint option, terminate this Agreement by both delivering written notices of termination of this Agreement to the Commission. The termination shall be effective ten (10) days after the Commission's receipt of such notices of termination, and this Agreement shall thereafter be of no further force and effect. The Commission may, after receipt of the notices of termination from Vons and Safeway under this Paragraph 9, take such action as it may consider

appropriate, including, but not limited to, an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

Order

I.

As used in this Order, the following definitions shall apply:

(A) "Vons" means The Vons Companies, Inc., its subsidiaries, divisions and groups controlled by Vons, and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) "Safeway" means Safeway Stores, Incorporated, its subsidiaries, divisions and groups controlled by Safeway, and their respective directors, officers, employees, agents and representatives and their respective successors and assigns. "Safeway" also means SSI Associates, L.P., its subsidiaries, divisions and groups controlled by SSI Associates, L.P., and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "Acquisition" means Vons' acquisition of the outstanding shares of the capital stock of certain subsidiaries of Safeway, specifically, Safeway Stores 23, Inc., Safeway Stores 27, Inc., Safeway Stores 29, Inc., and Safeway Stoes 30, Inc. (hereinafter referred to collectively as the "Safeway Subsidiaries").

(d) "Assets to be divested" means the assets described in Paragraph II(A) of the Order, also known as the "II(A) properties."

(E) "To be acquired store" means any retail grocery store in the Safeway Subsidiaries.

(F) "Eligible Person" means Federated Department Stores, Inc., dba Ralphs Grocery Company ("Ralphs"), Albertson's, Inc., Hughes Markets, Inc. ("Hughes"), Certified Grocers of California, Ltd., Big Bear Super Markets #3, and Stater Bros. Inc. ("Stater Bros.") and their respective successors, assigns, subsidiaries, divisions and groups.

(G) "Retail grocery store" means any full-line retail food store of 10,000 or more square feet, and which sells primarily a wide variety of canned or frozen foods; dry groceries; non-edible grocery items; fresh meat, poultry and produce (vegetables and fruits), and which often sells delicatessen items, bakery items, fresh fish or other specialty items.

(H) "Commission" means the Federal Trade Commission.

II.

It is ordered that:

(A) Vons or Safeway, as the case may be, shall divest, absolutely and in good faith, prior to consummating the Acquisition, the number of retail grocery stores (either any of the to be acquired stores, retail grocery stores presently operated by Vons, or any combination thereof) set forth below, and the grocery businesses operated therein, in each of the following locations.

(1) One store in Barstow, California;

(2) One store in Yucca Valley, California;

(3) One store in Santa Clarita, California;

(4) One store in Camarillo, California;

(5) One store in Palm Springs, California;

(6) Two store in Santa Barbara, California (including Goleta and Montecito), but not to include Safeway Store No. 384;

(7) One store in Clairemont, California;

(8) One store in Ocean Beach, California;

(9) One store in the La Presa-Paradise Hills area of San Diego, California;

(10) One store in Chula Vista, California; and

(11) One store in the North Park area of San Diego, California.

Such divestitures shall be (i) to an acquiror or acquirors and only in such a manner that receives the prior approval of the Commission, or (ii) to an Eligible Person.

Notwithstanding the definition of Eligible Person, Ralphs shall not be considered an Eligible Person for the store to be divested in Camarillo, Hughes shall not be considered an Eligible Person for the store to be divested in Santa Clarita and Stater Bros. shall not be considered an Eligible Person for the stores to be divested in Barstow and Yucca Valley.

(B) The Agreement to Hold Separate is attached hereto as Exhibit B and made a part hereof.

(C) In effecting the divestitures, Vons and/or Safeway, as the case may be, shall divest all rights to occupy the premises being divested and to operate a retail grocery business therein and shall retain no control or influence over the retail grocery business to be conducted after the divestiture. The purpose of the divestiture of such stores and this Agreement (including the Agreement To Hold Separate) is to ensure the continuation of the assets as ongoing, viable enterprises engaged in the retail sale of groceries and to remedy the lessening of competition alleged in the Commission's draft of complaint.

(D) The divestitures required by Paragraph II(A) may take place at any time after this Order becomes final, but in no event shall Vons consummate the Acquisition before such divestitures have been made.

(E) In the event that the Commission brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, for any violation of this Order, Vons shall consent to the appointment of a trustee by the Commission to divest the II(A) properties. If the Commission seeks appointment of a trustee by the court in such action, Vons shall consent to the appointment of a trustee by the court. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Vons to comply with Paragraphs II(A) through VI of this Order.

If a trustee is appointed by the Commission or a court pursuant to Paragraph II(E) of this Order, Vons consents to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Commission shall select the trustee, subject to Vons consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest any properties listed in Paragraph II(A) and such other properties as are identified in Paragraph II(E)(3) below in any location listed therein in which a store has not been divested as required in Paragraph II(A). The trustee shall have six (6) months from the date the trust agreement is executed to accomplish the divestiture, which shall be subject to the prior approval of the Commission, and subject also to the prior approval of the court if the trustee is appointed by a court.

(3) If, at the end of the six (6) month period, the trustee has not secured approval of the Commission or of the court of divestiture as required by Paragraph II(A), the trustee may, if the Commission determines in order to accomplish the divestiture, add such other assets as are required to effectuate the remedial purposes of this Order.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of any retail grocery store that the trustee has the duty to divest, and Vons shall develop such financial or other information relevant to the assets to be divested as

such trustee may reasonably request. Vons shall cooperate with the trustee, and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(5) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Vons' absolute and unconditional obligation to divest at no minimum price and the purposes of the divestiture as stated in Paragraph II.

(6) The trustee shall serve without bond or other security at the cost and expense of Vons on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to retain at the cost and expense of Vons such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to assist in the divestiture. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission or court, as the case may be, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Vons and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the II(A) properties and any other assets to be divested in accordance with Paragraph II(E)(3) of this Order.

(7) Within twenty (20) days of the appointment of the trustee, Vons shall, subject to the prior approval of the Commission, and subject to the approval of the court if the trustee was appointed by the court, and consistent with the provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as in Paragraph II of this Order.

(9) The trustee shall report in writing to the Commission and Vons every sixty (60) days, from the date the trust agreement is executed, concerning the trustee's efforts to accomplish divestiture.

III.

It is further ordered that, within sixty (60) days after this Order becomes final, and every sixty (60) days thereafter until Vons and Safeway have fully complied with the provisions of Paragraph II of this Order, Vons and Safeway shall each submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply with, or have complied with Paragraph II of the Order. Vons and Safeway shall include in their respective compliance reports, among other things that may be required from time to time, a full description of contracts or negotiations for the divestiture of the II(A) properties, including the identity of all parties contacted. Vons and Safeway also shall include in their respective compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning the mandated divestitures.

IV.

It Is Further Ordered that:

(A) For a period commencing on the date this Order becomes final and continuing for ten (10) years thereafter, Vons shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six (6) months of the date of the offer by Vons to purchase the facility, or any interest in a retail grocery store, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a retail grocery store, in the following cities or towns:

Las Vegas, Nevada
Bakersfield, California
Santa Clarita, California
Camarillo, California
Ventura, California
Thousand Oaks, California
Victorville, California
Barstow, California
Coachella Valley, California (an area including the cities and town of Palm Springs, Palm Desert, Indian Wells, Indio, Cathedral City, Rancho Mirage, La Quinta, and Coachella)
Yucca Valley, California
Solana Beach, California
Carlsbad, California
Vista, California
Escondido, California
Poway, California
Rancho Bernardo, California
South San Diego County, California (that portion of San Diego County, California that is south of the Miramar Naval Air Station)
Santa Barbara, Montecito and Goleta, California
Palmdale, California
Lancaster, California
Simi Valley, California
Moreno Valley, California

Provided, however, that this Paragraph IV(A) shall not be deemed to require prior approval of the Federal Trade Commission of the construction of new facilities by Vons or the purchase or lease by Vons of a facility that has not been operated as a retail grocery store at any time during the six (6) month period immediately prior to the purchase or lease by Vons in those locations.

(B) For a period commencing on the date this Order becomes final and continuing for ten (10) years thereafter, Vons shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidaries or otherwise, any retail grocery store, including any facility that has been operated as a retail grocery store within six (6) months of the date of the offer to purchase the facility, or any interest in a retail grocery store, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates any retail grocery store in: (1) The city of San Bernardino, California; or (2) the city of Riverside, California; or (3) the counties of Los Angeles and Orange, California; provided, however, that upon thirty (30) days prior written notice to the Commission, Vons may acquire, directly or indirectly, through subsidaries or otherwise, any such retail grocery stores, so long as, in any twelve (12) month period, commencing on the date this Order becomes final and continuing thereafter for ten (10) years, the number of such retail grocery stores acquired, directly or indirectly, does not exceed: (1) Two in the city of San Bernardino, California; (2) two in the city of Riverside, California; and (3) ten in the countries of Los Angeles and Orange, California. Provided further, however, that these prohibitions shall not relate to the construction of new facilities by Vons or the purchase or lease by Vons of a facility that was not operated as a retail grocery store at any time during the six (6) month period immediately prior to the purchase or lease by Vons in those locations.

(C) One year from the date this Order becomes final and for each of the nine (9) years thereafter, Vons shall file with the Commission a verified written report of its compliance with this paragraph. Such reports shall include a listing of all acquisitions of retail grocery stores made by Vons without prior approval of the Commission in my area listed in this Paragraph IV.

V.

It is further ordered that, for the purposes of determining or securing

compliance with this Order, subject to any legally recognized privilege, and upon written request with reasonable notice to Vons or Safeway made to their principal offices, Vons and Safeway shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Vons or Safeway relating to compliance with this Order; and

(B) Upon five (5) days' notice to Vons or Safeway and without restraint or interference from them, to interview directors, agents, representatives, officers or employees of Vons or Safeway, who may have counsel present, regarding such matters.

VI.

It is further ordered that Vons shall notify the Commission at least thirty (30) days prior to any change in its corporate structure that may affect compliance obligations arising out of this Order including but not limited to dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

Dissenting Statement of Commissoner Azcuenaga

Vons Companies, Inc., File No. 881–0038

I dissent from the decision of the Commission majority to accept for public comment from Vons Companies, Inc. ("Vons") this proposed consent order because the order is not sufficiently broad to resolve the potential anticompetitive effects of Vons' acquisition of the southern California stores of SSI Associates, L.P. ("Safeway"). Based on the information now available, the levels of concentration, conditions of entry, and other facts that bear on the state of competition in the supermarket industry in discrete southern California markets indicate that the Commission should reqire the divestiture of a greater number of stores to protect competition in markets in which Vons and Safeway now compete. I would welcome comment on the scope of the divestiture provision.

Analysis to Aid Public Comment on Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from The Vons Companies, Inc. and SSI Associates, L.P. an agreement containing consent order. This agreement has been placed on the public record for thirty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. The Commission will review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by The Vons Companies, Inc. ("Vons") of the capital stock of the Southern California Division of Safeway Stores, Incorporated ("Safeway"). SSI Associates, L.P. owns 96.4 percent of the voting securities of Safeway. Vons and Safeway are competitors in the operation of supermarkets in areas of Southern California and Nevada. Both Vons and Safeway also operate various warehouses and manufacturing facilities in support of their retail operations. Vons proposes to acquire 172 Safeway stores and attendant warehouse and distribution facilities in southern California.

The agreement containing consent order would, if issued by the Commission, settle the portions of the complaint that allege an anticompetitive effect in the retail sale of groceries by supermarkets in seven areas in California, including: Barstow; Yucca Valley; Santa Barbara, Montecito, and Goleta; Camarillo; South San Diego County; Santa Clarita; and Coachella Valley, including the cities of Palm Springs, Palm Desert, Cathedral City, Indio, Coachella, Rancho Mirage and La Quinta.

The Commission has reason to believe that the acquisition would have an anticompetitive effect in the retail sale of groceries by supermarkets in the areas described above, and would violate section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effect.

The Order accepted for public comment contains provisions requiring the divestiture, in each of the areas described above, of either: (1) A store or stores acquired by Vons from Safeway; or (2) a store or stores currently operated by Vons. By the terms of the Order, Vons may divest stores either to any person or persons approved by the Commission, or to one of six different eligible persons, including Ralph's Grocery Company, Albertson's, Hughes Markets, Inc., Big Bear Super Markets, Stater Bros. Markets, or Certified Grocers of California, Ltd. If a store is divested to one of the six eligible persons, there will be no separate comment period. If the store will be sold to another purchaser, the thirty day comment period will apply.

Vons and Safeway have agreed that they will not close the proposed acquisition until a final Order is issued and the required divestitures have been made. If a final Order has not been issued within ninety days after the date that the proposed agreement has been placed on the public record, the parties have the option of closing the proposed transaction after giving the Commission ten days notice of their intent to close. The Order provides that if Vons consummates the acquisition before completing the required divestitures, or if the Commission brings any action against Vons under section 5(1) of the Federal Trade Commission Act for violation of the Order, or pursuant to any statute enforced by the Commission, Vons shall consent to the appointment by either the Commission or a court of a trustee, who would have six additional months to divest the acquired assets. After the initial six-month period, if the trustee is not able to find purchasers for the assets, the trustee would have discretion, if the Commission finds it necessary, to sell any other assets of Safeway that were acquired by Vons, up to and including all of the assets of Safeway acquired by Vons, in order to effectuate a sale of the stores in the seven areas described above.

For a period of ten years from its effective date, the Order would prohibit Vons from acquiring, without prior Commission approval: (1) Assets of or interest in eleven or more retail grocery stores or any company operating eleven or more retail grocery stores in Los Angeles or Orange Counties; (2) assets of or any interest in three or more retail grocery stores or any company operating three or more retail grocery stores in the city of San Bernardino; (3) assets of or any interest in three or more retail grocery stores or any company operating three or more retail grocery stores in the city of Riverside; or (4) assets of or any interest in any retail grocery store or any company operating a retail grocery store in numerous cities and towns in California and Nevada where both Vons and Safeway currently operate retail grocery stores. In addition, the Order would provide that for those areas in which prior approval is not required for the acquisition of a specified limited number of stores in any twelve (12) month period, Vons must give thirty (30) days prior notice to the Commission. These areas are: (1) Los Angeles or Orange County; (2) the city of San Bernardino; or (3) the city of Riverside.

It is anticipated that the provisions of this Order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the consent Order, in order to aid the Commission in its determination of whether it should make final the order contained in the agreement.

Emily H. Rock

Secretary

[FR Doc. 88-12442 Filed 6-1-88; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 205

Employee Representative

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to replace current part 205 of its regulations with a new Part 205 which clarifies the definition of an employee representative, identifies the factors considered in determining whether an individual meets the definition of an employee representative, clarifies the legal significance of a determination that an individual is an employee representative, and explains the procedure for reporting and crediting compensation and service under the Railroad Retirement Act for an employee representative.

DATE: Comments must be submitted on or before August 1, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Lori A. Watkins, General Attorney, Railroad Retiremennt Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4567 (FTS 386-4567).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act (45 U.S.C. 231, *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors, who meet certain eligibility requirements under that Act. These benefits are financed by payroll taxes levied under the Railroad Retirement Tax Act (26 U.S.C. 3201, *et seq.*) on covered employers and employes. The Railroad Retirement Tax Act is administered by the Internal Revenue Service. In order to receive benefits under the Railroad Retirement Act an individual must perform railroad service as an employee or an employee representative. Service as an employee representative is reported to the Board purusant to section 9 of the Railroad Retirement Act (45 U.S.C. 231h) and is used by the Board to determine benefits under that Act.

The proposed Part 205 provides a more complete explanation of factors to be considered in determining whether an individual is an employee representative, and how that individual must report his or her service and compensation to the Board, than the current Part 205.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, the information collections imposed by this rule have been approved by the Office of Management and Budget under control number 3220-0014.

List of Subjects in 20 CFR Part 205

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the Code of Federal Regulations is proposed to be amended by revising Part 205 to read as follows:

PART 205—EMPLOYEE REPRESENTATIVE

Sec.

205.1 Introduction.
205.2 Definition of employee representative.
205.3 Factors considered in determining employee representative status.
205.4 Claiming status as an employee representative.
205.5 Reports of an employee representative.
205.6 Service of an employee representative.
205.7 Termination of employee representative status.

Authority: 45 U.S.C. 231, 45 U.S.C 231f, 45 U.S.C. 231h.

§ 205.1 Introduction.

This part sets out the various factors considered in determining an individual's status as an employee representative under section 1(b)(1) of the Railroad Retirement Act, and discusses the procedure for reporting and crediting of compensation and service as an employee representative under that Act. An employee representative is considered to be a covered employee under the provisions of the Railroad Retirement Act.

§ 205.2 Definition of employee representative.

(a) An individual shall be an employee representative within the meaning of the Railroad Retirement Act if he or she is an officer or official representative of a railway labor organization, other than a labor organization included in the term "employer" within the meaning of Part 202 of these regulations, who before or after August 29, 1935, was in the service of an "employer" within the meaning of Part 202 of these regulations and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(b) An individual is also considered to be an employee representative within the meaning of the Act if he or she is regularly assigned to or regularly employed by an individual described in paragraph (a) of this section in connection with the duties of the office of employee representative of said individual.

(c) *Example.* A is employed by railroad R as a carman. He is also employed as recording secretary for the local chapter of union U, which has been recognized as the collective bargaining representative of the carmen of R. Although U represents some railroad employees, it is not a railway labor organization as described in Part 202 of these regulations. A is an employee represenative. His service for U is treated as employee service under the Railroad Retirement Act.

§ 205.3 Factors considered in determining employee representative status.

The following factors, among others, are considered by the Board in determining an individual's status as an employee representative:

(a) The name of the last railroad or other employer under the Act by which the individual was employed, and the period of employment;

(b) The present official name of the organization by which the individual is employed, as well as any other name(s) under which that organization operated previously;

(c) The date on which the organization was founded;

(d) The title of the position held by the individual within the organization, and the duties of said position;

(e) The method by which the individual, or the person to whom he or she is regularly assigned or by whom he or she is regularly employed, was authorized to represent members of the organization in negotiating with their employers, the date on which the individual was so authorized, and the time period covered by said authorization;

(f) The purpose or business of the organization as reflected by its constitution and by-laws;

(g) The extent to which the organization is, and has been recognized as, representative of crafts or classes of employees in the railroad industry;

(h) The extent to which the purposes and businesses of the organization are and have been to promote the interests of employees in the railroad industry as indicated by:

(1) The specific employee group(s) represented; and

(2) The proportion of members that are employed by railroad employers in relation to those members that are employed by non-railroad employers;

(i) Whether the organization has been certified by the National Medication Board as a representative of any class of employees of any company;

(j) If the organization has not been certified as representative of any class of employees, the manner and method by which the organization determined that it was the duly authorized representative of such employees;

(k) Whether the organization participates or is authorized to participate in the selection of labor members of the National Railroad Adjustment Board;

(l) Whether the organization was assisted by any carrier by railroad, express company, or sleeping car company, directly or indirectly, in its formation, in influencing employees to join the organization, financially, or in the collection of dues, fees, assessments, or any contributions payable to the organization.

§ 205.4 Claiming status as an employee representative.

An individual who claims status as an employee representative shall file a report in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220–0014.)

§ 205.5 Reports of an employee representative.

An annual report of creditable compensation shall be made by an employee representative in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220–0014.)

§ 205.6 Service of an employee representative.

Service rendered as an employee representative is creditable in the same manner and to the same extent as though the organization by which the employee representative was employed were an employer under the Railroad Retirement Act. (Creditable railroad service is discussed under Part 210 of the Board's regulations.)

§ 205.7 Termination of employee representative status.

The employee representative status of any individual shall terminate whenever the individual or the organization by whom he or she is employed loses any of the characteristics essential to the existence of employee representative status.

Dated: May 23, 1988.

By Authority of the Board.
For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–12301 Filed 6–1–88; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1010

[Docket No. 86N–0211]

Performance Standards for Electronic Products; General; Variances From Performance Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing minor clarifying changes in the variance regulations. FDA is also proposing to discontinue its procedure of publishing in the Federal Register notices of the availability of approved variances from performance standards for electronic products.

DATES: Written comments by August 1, 1988. FDA proposes that any final rule based on this proposal be effective 30 days after its date of publication in the Federal Register.

ADDRESS: Written comments may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arlene Underdonk, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of July 14, 1981 (46 FR 36333), FDA announced the agency's plan for conducting a systematic review of its rules and asked the public to comment on those FDA regulations that are perceived to be the most burdensome. The purpose of the review was to identify regulations that impose unnecessary burdens on the public generally or on specific segments of the public such as small business and, for such regulations, to explore alternative measures for protecting the public health. FDA's review of its regulations was initiated in response to the Regulatory Flexibility Act (Pub. L. 96–364), which requires all regulatory agencies to initiate a review of any regulations which can have a significant impact on small manufacturers, and to Executive Order 12291, which requires agencies to examine new and existing regulations for possible significant impacts on the industry as a whole. Subsequently, as a result of the assessment of public comments received in response to FDA's notice and of other available information, the agency published a notice in the Federal Register of July 2, 1982 (47 FR 29004), that identified the rules initially selected for highest priority review. The July 2, 1982, notice also advised that FDA intended to select other rules for review.

Although the July 2, 1982, notice did not identify the regulation concerning the procedure used to grant variances from performance standards for electronic products, FDA's experience in implementing the regulation since 1974 indicated a need for its review. Therefore, FDA conducted a comprehensive review of this regulation in light of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and FDA's experience in implementing the regulation for the past 14 years.

II. The Variance Regulation

In the Federal Register of April 18, 1974 (39 FR 13879), FDA published its procedures for granting variances from performance standards for electronic products (21 CFR 1010.4). FDA issued the regulation under the authority of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f).

Since publishing the 1974 regulations FDA has published several corrections and amendments to the variance regulation to provide consistency with other regulations (46 FR 8957; January 27, 1981, and 50 FR 7518; February 22, 1985). On August 17, 1979, FDA published in the Federal Register an amendment to eliminate a requirement that FDA publish a notice of issuance of a variance and allow a 30-day objection period (44 FR 48190).

The current variance regulation (21 CFR 1010.4) consists of four paragraphs:

Paragraph (a), *Criteria for variances,* determines when FDA will grant a variance;

Paragraph (b), *Applications for variances,* specifies the contents of an application for a variance;

Paragraph (c), *Ruling on applications,* explains FDA's procedures for approving, denying, amending, or withdrawing a variance and informing the applicant and the public of its actions on an application for a variance;

Paragraph (d), *Certification of equipment covered by the variance,* describes labeling changes to be made by manufacturers (1) to state that the product conforms to the performance standard except for the characteristics covered by the variance; (2) to state that the product conforms to the variance; and (3) to provide for the inclusion of the assigned number and effective date of the variance.

III. Review of the Regulation

FDA initiated a retrospective review of this regulation by analyzing regulatory actions taken as a result of its requirements. The agency also reviewed the costs, benefits, and other effects of the regulation. The purpose of the review was to identify any changes which would minimize unproductive disruption of the marketplace while maintaining an optimum level of public health protection.

As a result of the review, FDA has determined that the regulation continues to serve the purpose for which it was developed; that is, the criteria for granting a variance, the specific contents of an application for the variance, the procedures for FDA to grant or withdraw a variance, and the appropriate labeling changes to accommodate a variance have served FDA's goal of assuring that electronic products are reasonably safe and effective while relieving manufacturers of some unnecessary requirements on a case-by-case basis. Therefore, FDA is not proposing any substantive changes in the requirements of the regulation.

Based upon review of correspondence and applications for variances received from manufacturers of electronic products, FDA is proposing clarifying changes to help applicants to more readily understand the requirements and thus to expend fewer resources in submission of applications.

Also, the agency is proposing to remove the requirement in the variance procedure (§ 1010.4(c)(2)) that a notice of availability of the approved variance be published in the **Federal Register**. The agency believes that publication of the notice of approval is no longer necessary. FDA also believes there is a lack of public interest in the variance procedure, as evidenced by a complete absence of responses to published notices of availability of approved variances.

Interested persons have suggested that FDA announce its approval of variances in publications such as trade journals and FDA's own publications rather than in the **Federal Register**. FDA may adopt this procedure.

If FDA issues a final rule upon its proposal to amend the regulation so as to remove the requirement that the agency announce variance approval in the **Federal Register**, FDA would continue to maintain the administrative record of each variance action as it now does. The agency would continue to file the applications for variance and for amendments and extensions of a variance as well as all correspondence on the applications with the Dockets Management Branch and make them and nonconfidential background information available under the Freedom of Information Act (5 U.S.C. *et seq.*). Removing the requirement for announcement of the approval of variances in the **Federal Register** would not speed up approval of variances, because approval of variances takes place before FDA's publication of notices of availability of the variances. The proposed change in procedure would, however, conserve FDA's resources.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact is required.

V. Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of the Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order.

VI. Submission of Comments

FDA invites comments from the public and regulated industry regarding to proposed amendments to the regulation. Intrested persons may submit written comments, data, or information to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Written comments are to be submitted by August 1, 1988; however, comments received after that date will be considered, if possible. Any comments data, and information submitted in response to this notice will be available for inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 1010 be amended as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

1. The authority citation for 21 CFR Part 1010 continues to read as follows:

Authority: Sec. 358, 82 Stat. 1177; 42 U.S.C. 263f.

2. Section 1010.4 is amended by revising paragraph (a), by removing paragraph (c)(2) and redesignating prographs (c) (3) and (4) as paragraphs (c) (2) and (3), respectively, to read as follows:

§ 1010.4 Variances.

(a) *Criteria for variances.* (1) Upon application by a manufacturer (including an assembler), the Director, Center for Devices and Radiological) Health, Food and Drug Administration, may grant a variance from one or more provisions of any performance standard under Subchapter J of this chapter for an electronic product subject to such standard when the Director determines that granting such a variance is in keeping with the purposes of the Radiation Control for Health and Safety Act of 1968 and:

(i) The scope of the requested variance is so limited in its applicability as not to justify an amendment to the standard, or

(ii) There is not sufficient time for the promulgation of an amendment to the standard.

(2) The issuance of the variance shall be based upon a determination that:

(i) The product utilizes an alternate means for providing radiation safety or

protection equal to or greater than that provided by products meeting all requirements of the applicable standard, or

(ii) The product performs a function or is intended for a purpose which could not be performed or accomplished if required to meet the applicable standards, and suitable means for assuring radiation safety or protection are provided, or

(iii) One or more requirements of the applicable standard are not appropriate, and suitable means for assuring radiation safety or protection are provided.

* * * * *

Dated: May 2, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-12335 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3390-3]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Amendment to Method 7A; Nitrogen Oxide Emission Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The purpose of this advance notice is to announce the amending of Method 7A, "Determination of Nitrogen Oxide Emissions from Stationary Sources—Ion Chromatographic Method," of Appendix A of 40 CFR Part 60. A recent reevaluation of the method and testing data has shown that problems exist and unacceptable accuracy and precision are obtained. The problem appears to be linked to the acid strength of the absorbing solution. A study has shown that acceptable accuracy and precision may be obtained by substituting the Method 7 absorbing solution, which has a higher acid strength, for the solution currently used in Method 7A. In light of these findings, all future Method 7A testing should be performed in this manner. This amendment will be discussed in further detail in a subsequent notice.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Technical Support Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1063.

Date: May 25, 1988.

Don R. Clay,

Acting Assistant Administrator.

[FR Doc. 88-12363 Filed 6-1-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3390-1; TN-037]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Two Ozone Nonattainment Areas in Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a request by Tennessee that Bradley County and Hamilton County be redesignated from nonattainment to attainment for ozone. The redesignation of these counties to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 per year and on implementation of EPA-approved control stragegies.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before July 5, 1988.

ADDRESSES: Written comments should be addressed to Melinda Privott of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Division, Custom House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

Chattanoogga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407.

FOR FURTHER INFORMATION CONTACT: Melinda Privott, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In the March 3, 1987, **Federal Register** (43 FR 8962), EPA designated Bradley County and Hamilton County as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Bradley County and Hamilton County had experienced oxidant violations. Several areas in Tennessee were designated nonattainment for ozone and the State was therefore required to revise their state implementation plan (SIP) for ozone. Tennessee drafted and adopted statewise regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program and through implementation of Group I and Group II VOC regulations, Tennessee demonstrated attainment of the ozone standard in Bradley County and Hamilton County. EPA approved Tennessee's ozone SIP on August 13, 1980, (45 FR 53813). Tennessee has requested that EPA change the attainment status of Bradley County and Hamilton County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. In the event that three years of ozone data is not available, the most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy.

Tennessee's request for redesignation is based on three years of ambient ozone data. Specifically, the most recent three years of air quality data (1983, 1984, and 1985 for Bradley County—1984, 1985, and 1986 for Hamilton County) for each county show the number of expected exceedances to be less than or equal to 1.0 per year, as is summarized below:

	Exceedances (ppm)	Number of expected exceedances [1]	NAAQS ozone [2]
Bradley County			
1983	none	0.00	0.12 ppm
1984	none		
1985	none		
(Total:	0 exceedances)		
Hamilton County			
VAAP:			
1984	none	0.33	0.12 ppm
1985	.128		
1986	none		
(Total:	1 exceedances)		
Sequoyah:			
1984	none	0.70	0.12 ppm
1985	none		
1986	.127, .128		
(Total:	2 exceedances)		

[1] Three-year average.
[2] Not to be exceeded more than once per year.

Evidence submitted by the State and the Region IV Air Compliance Branch files have been reviewed to determine if the sources in Bradley County and Hamilton County to which the VOC regulations apply are fully implementing the EPA-approved control strategy. This review confirms that all sources in Hamilton County and Bradley County subject to the VOC regulations have either installed and are operating RACT controls or are on an enforceable compliance schedule.

For a more detailed discussion, please refer to the Technical Support document which is available for inspection at the EPA Region IV office.

Proposed Action: Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposes to redesignate Bradley County and Hamilton County from ozone nonattainment to attainment.

The public is invited to participate in this rule making by submitting written comments on these proposed actions.

Evidence reviewed by EPA indicates that the sources in Bradley County and Hamilton County to which the VOC regulations apply are fully implementing the EPA-approved control strategy.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Proposed Action: Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA proposed to redesignate Bradley County and Hamilton County from ozone nonattainment to attainment.

The public is invited to participate in this rule making by submitting written comments on these proposed actions.

Under 5 U.S.C. 605(b), the Administrator has certified that area redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: June 24, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 88–12366 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[FRL–3390–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Infectious Waste Management

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comment.

Editorial Note: This document was received at the Office of the Federal Register on May 27, 1988.

SUMMARY: The Agency today is publishing a notice of data availability and request for comment on issues pertaining to infectious waste. In particular, EPA is announcing the availability of several documents which provide current information on infectious waste definition and management issues. In addition, in response to recent public concern over potential hazards posed by mismanagement of infectious wastes, the Agency is requesting comment on several issues concerning the management and disposal of infectious waste.

DATES: EPA will accept public comments on the issues posed in this notice until August 1, 1988.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket (S–201) (WH–562), 401 M Street SW., Washington, DC 20460.

Place "Docket number F–88–IWMA–FFFFF" on your comments. The Office of Solid Waste (OSW) docket is located in the sub-basement at the above address, and is open from 9:00 to 4:00, Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials at (202) 475–9327. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346, or at (202) 382–3000. For additional information contact Denise Zabinski, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–7458.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
II. Availability of Data
III. Issues Presented for Public Comment
A. Definition of Infectious Waste
B. Nature of the Problem Posed by Infectious Waste
C. EPA's Role in Infectious Waste Management
D. Tracking System for Infectious Waste

E. Exemptions From an Infectious Waste Control Program
List of Subjects in 40 CFR Part 261

I. Background

Today's Notice is in response to increased recent interest regarding infectious waste handling, treatment, and disposal. The purpose of this Notice is to make Agency information on the safe management of infectious wastes available to the public and to solicit public comment on a number of issues pertaining to infectious waste and the possible need for further governmental action. The Agency believes that the proper management of infectious waste is crucial to ensure that any potential hazards to the public and to individual workers are avoided.

By way of background, on December 18, 1978, the Agency proposed regulations under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580 (Oct. 21, 1976)), which would classify certain infectious wastes as hazardous waste. These wastes included infectious waste generated by certain departments in health care facilities and veterinary hospitals, by laboratories handling etiologic agents, and by sewage treatment facilities, unless these wastes were sterilized or incinerated in accordance with specified methods. (December 18, 1978, 43 FR 58946, 58956.)

The Agency proposed to list these wastes as hazardous because the Agency believed at that time that if they were improperly managed, they could pose a substantial hazard to human health and the environment. It should also be noted that the statutory definition of hazardous waste specifically cited infectiousness as one of the properties that the Agency should consider in its evaluation in defining wastes as hazardous; see section 1004(5), where it states "the term hazardous waste means a solid waste, or combination of solid wastes which because of its quality, concentration, or physical, chemical, or infectious characteristics, may . . .". Significant comments were received on the proposal; based upon these comments infectious waste was not identified or listed as a hazardous waste when the regulations were made final on May 19, 1980. See 45 FR 33087. Instead, the Agency initiated several activities to collect information and assess the problems posed by infectious waste management and disposal. This information was then used by the Agency to develop a draft guidance document in 1982 (on which comment was solicited) on infectious waste management. EPA then brought in professionals from the health care industry to provide additional information in preparing a final guidance document which was published in 1986. This document outlined a prescriptive program for the management of infectious waste. See "EPA Guide for Infectious Waste Management", described in further detail in Part II, below. Additional guidance on the management of infectious waste has also been provided. See "Hospital Waste Combustion Study", also in Part II below, for a more detailed discussion.

In addition to publishing guidance in May 1986, the Agency has taken an active role in training health care professionals regarding the responsible management of infectious waste. Staff from the Agency have participated as faculty or professional experts at symposia sponsored by the American Hospital Association and the American Society for Hospital Engineering.

Furthermore, in November of 1987, as a result of several isolated incidents of improper management and disposal of infectious wastes and growing public concern about the potential threat of infectious waste to human health and the environment, the Agency called together a panel of experts to discuss the definition of, proper management, and risks posed by infectious wastes (see Part II for further discussion of this meeting).

Today's notice of data availability and request for public comment is a further effort to (1) make available to the public and those persons responsible for managing infectious waste the EPA guidance manual, and (2) solicit comment on issues of concern regarding the proper management of infectious waste. The Agency believes that the proper management of infectious wastes can significantly reduce the risks associated with these wastes. The Agency, with this Notice, will reevaluate and assess the problems posed by infectious wastes to determine if further Federal governmental action is necessary.

II. Availability of Data

As already indicated, the agency has not promulgated regulations controlling the management of infectious waste; instead, a number of guidance documents have been prepared to assist the states and others interested in the management of infectious waste. These documents are: (1) "EPA Guide for Infectious Waste Management", U.S. EPA, Office of Solid Waste and Emergency Response, EPA/530–SW–86–014, May, 1986; and (2) "Hospital Waste Combustion Study, Data Gathering Phase, Final Draft Report", prepared by Radian Corporation, Research Triangle Park, NC for U.S. EPA, Office of Air Quality Planning and Standards, EPA Contract No. 68–02–4330, October, 1987. Each of the these documents is included in the RCRA public docket, at the address listed above. The following is a brief description of each document and includes further information on how the public can obtain copies:

(1) The "EPA Guide for Infectious Waste Management" outlines the EPA perspective on environmentally acceptable techniques for managing infectious wastes. Topics covered include a definition of infectious waste, the various categories of waste included under the definition, and recommended practices for packaging, transportation, treatment, storage, and disposal of these wastes. In particular, the document discusses various types of treatment alternatives and describes the suggested treatment methods for each waste category. The document is intended to provide guidance to persons responsible for infectious waste management. State and local regulatory agencies also will find this manual useful as resource material. Copies are available as publication No. PB86.199130 from the National Technical Information Service (NTIS), Port Royal Road, Springfield, Virginia (703) 478–4650. This document is also available in the RCRA public docket.

(2) The "Hospital Waste Combustion Study", October, 1987, summarizes readily available information on the hospital waste combustion industry including waste characterization, industry technology, multipollutant air emissions data, emission control technologies, current regulation and control strategies, and hospital waste combustor population characteristics, including suggested model plant parameters for use in exposure modeling. The study was initiated by EPA's Office of Air Quality Planning and Standards in response to increasing concerns over the potential public health impacts from the disposal of hospital wastes, including incineration and other methods of disposal. This document is available in the RCRA public docket.

In addition to the development of these documents, the Agency held a meeting last November to discuss issues pertaining to infectious waste management. The primary purpose of this meeting was to discuss and evaluate the nature and extent of the risks to human health and the environment posed by wastes that

contain infectious materials. The meeting was held in response to growing concerns about infectious waste management and to assist EPA in determining whether the Agency should undertake any additional action under the Resource Conservation and Recovery Act. Infectious waste issues were discussed by a group of experts representing health care professionals and practitioners from government, academia, industry and professional and trade associations called together by the EPA. The proceedings of this meeting have been made available to the public. (See "Report on the Proceedings of the EPA Infectious Waste Management Meeting, November 12, 1987, EPA Headquarters, Washington, D.C.", available in the RCRA public docket).

The Agency also has examined a recent survey, entitled, "State Infectious Waste Regulatory Programs", assembled for the Council of State Governments, which summarizes the current status of state infectious waste regulations. This document is available from the Council of State Governments and a copy has been placed in the RCRA public docket for this notice.

III. Issues Presented for Public Comment

Several recent incidents involving infectious waste mismanagement have resulted in a number of infectious waste issues being presented to the Agency. The Agency is offering today, for public comment, issues concerning infectious waste. These issues are intended to solicit information which will help the Agency to better understand the problems posed by infectious waste, to identify additional sources of information, and to determine whether further guidance or rules should be developed by EPA. Each of these issues is presented below, introduced by a brief discussion and followed by specific questions for comment.

A. Definition of Infectious Waste

EPA currently defines infectious waste as waste capable of causing infectious disease. This definition requires the consideration of several factors contributing to the risk of introduction of disease. As described in EPA's guidance manual, these factors include: (1) Presence of a pathogen of sufficient virulence; (2) dose of the pathogen; (3) portal of entry; and (4) resistance of host. For a waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in infectious disease. EPA has identified in the Guidance Document six infectious waste categories, including: (1) Isolation wastes; (2) cultures and stocks of infectious agents and associated biologicals; (3) human blood and blood products; (4) pathological wastes; (5) contaminated sharps; and (6) contaminated animal carasses, body parts and bedding.

The Center for Disease Control (CDC) under the Department of Health and Human Services has also issued guidelines on infectious waste. Both EPA and CDC define infectious waste according to both waste characteristics and waste type. The CDC guidelines differ only slightly from EPA's guidelines in how they define infectious waste. In particular, both Agencies consider microbiological waste, pathological waste, blood, and contaminated sharps as infectious waste. EPA considers communicable disease isolation wastes as infectious, while CDC recommends such waste be treated according to hospital policy. EPA also has identified certain wastes such as surgery and autopsy wastes, dialysis unit wastes, and contaminated equipment, which the Agency lists as optional infectious wastes, and thus may require special handling. CDC does not consider these optional wastes infectious. Also, CDC's guidelines only pertain to hospitals while EPA's guidance deals with a wider variety of sources.

The state tend to classify infectious waste in one of three ways: (1) As a hazardous waste; (2) as a special waste; or (3) as a solid waste. The trend is to classify infectious wastes as special or solid wastes. Current state regulations vary with respect to how they define infectious waste. Approximately two-thirds of the states have definitions in place or are currently adding to or amending their definitions of infectious waste. Of the 19 states that have definitions in place which are not undergoing amendment, approximately half include the four common EPA/CDC infectious wastes in their definitions. While there exists a certain amount of variation among the States' regulations, there appears to be some general agreement among the states as to the basic definition of infectious waste.

The Agency is requesting comment on the following issues concerning defining infectious waste: Is EPA's current definition of infectious waste appropriate? If not, how should infectious waste be defined? Should this definition be based on waste characteristic, waste type, waste source, or a combination of these factors? Are there different categories of infectious waste that warrant differing degrees of control?

B. Nature of the Problem Posed by Infectious Waste

Infectious wastes are generally disposed of through incineration, landfilling, or disposal in public sewers. Treatment of these wastes may or may not occur prior to disposal in landfills or sewers. Such treatment if it occurs, is called pretreatment, and for infectious waste normally involves some form of sterilization of the waste, either through steam, chemical or other method or process of sterilization. The goal of pretreatment is to greatly reduce, if not eliminate, any infectious characteristic. Approximately 56 percent of the states require or are considering requiring pretreatment before land disposal. At least twelve states currently allow, under certain conditions, land disposal of infectious waste without pretreatment.

Current literature indicates that the risks posed by infectious waste are primarily occupational, potentially affecting those people who encounter these wastes from the point of generation to the point of disposal. Two occupations that regularly encounter infectious waste are hospital employees and waste disposal workers. The Agency, therefore, is interested in the risks posed to these two groups, as well as any risks posed to the general public.

The risks posed to these groups may be specific to certain wastes, such as contaminated sharps (e.g., scalpels and hypodermic needles), or to certain management practices. The Agency also is interested in how proper packaging of these wastes can curtail occupational risks posed to the groups mentioned above. Proper packaging of these wastes reduces the potential for exposure which is a necessary factor for transmission of these diseases. This point is recognized in that 15 states currently impose packaging/handling requirements on infectious waste generators, and 16 states are considering imposing such requirements.

The Agency requests comment on the following issues: What are the risks and problems posed by exposure to infectious waste? To what extent is the mismanagement of these wastes a problem? If fully implemented, are the current pretreatment and packaging practices capable of reducing the risks posed by infectious waste or are additional requirements necessary? Should specific disposal requirements be placed on specific wastes (i.e., sharps)?

C. EPA's Role in Infectious Waste Management

As already discussed, EPA does not regulate infectious wastes as a hazardous waste. Under RCRA, the Agency has the authority to regulate these wastes as hazardous. As discussed above, the Agency has chosen to issue guidelines on proper infectious waste management. In addition, infectious wastes are subject to regulation as non-hazardous solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

Many states have developed or are currently developing legislation and regulations to address infectious wastes. These state initiatives are relatively recent efforts, stimulated by the growing concern over infectious waste management. There is considerable variation in the scope and level of stringency among the various state efforts. Currently 39 states have some form of infectious waste regulation. Five of the states without such regulations plan on developing them soon. Currently, 88 percent of the states are, or will soon be, regulating infectious waste. This compares with 57 percent of the states that regulated infectious wastes in 1986.

It has been suggested that one alternative to Federal regulation of infectious waste is the development of a model state program. A model state program is a comprehensive management program designed to provide guidance to states which are developing similar programs. The model programs serve to make the expertise of the Agency available to states and localities that may need assistance in developing comprehensive and effective programs. Such models can provide useful information and guidance to those states developing programs, but also provide state with the flexibility to tailor the model to their individual state needs.

The Agency is requesting comment on the following issues concerning EPA's role in infectious waste management: What roles should EPA and/or the states play in the management of infectious waste? Should there be a Federal regulatory structure for infectious waste management or should the Federal role be one of providing technical assistance and guidelines for state infectious waste programs? Should EPA's role be in the transfer of information on infectious waste to states, localities, and the public? Is a model state program for regulation of infectious wastes necessary or helpful? If so, are there particular areas on which such a program should concentrate?

D. Tracking System for Infectious Waste

Several instances of improper disposal of infectious waste have been documented. It has been suggested that a tracking system may alleviate the possibility of such improper disposal. Tracking a waste can serve to improve the accountability of the parties involved in the management and disposal of that waste. In this way, tracking has the potential to improve compliance with management and disposal regulations.

Currently, infectious wastes are not subject to any Federal tracking requirements. If these wastes were simply classified as hazardous wastes by Federal regulations, they would be subject to the manifesting requirements of RCRA Subtitle C regulations. The manifest tracking requirement of Subtitle C relies on exception reporting for tracking of waste. Exception reporting requires generators of regulated wastes who do not receive proper copies of the manifest from the disposal facility to report this noncompliance to a designated authority.

Some tracking of infectious waste is currently being implemented at the state level. A number of states have or are considering imposing transportation and recordkeeping requirements on infectious waste generators and haulers. In some states the types of shipping papers required are specified. Where tracking is addressed in these state regulations, the tendency is to require the generator to maintain records on site, rather than submit manifests to the State.

The Agency requests comment on the following tracking issues: What type of tracking system would be most appropriate for infectious wastes? Which infectious wastes should be tracked? Should exception reporting be required?

E. Exemptions From an Infectious Waste Control Program

Although much of the infectious waste that is generated comes from hospitals and large laboratories, there are many small generators in the form of private offices, clinics, and smaller labs which may become subject to regulation, if not otherwise exempted. Under current Subtitle C regulations, small quantity generators of hazardous waste are subject to certain conditional exclusions. Presently, all but six states have or are considering regulations pertaining to infectious waste. The majority of states identify hospitals as the target generator for regulation of infectious waste. Many of the states that regulate hospitals also regulate clinics. Approximately half of the states that regulate hospitals also regulate doctors and dentists offices, and animal care facilities. Five states currently exempt small quantity generators from some or all infectious waste requirements.

The Agency requests comments on the following issues concerning exemptions from infectious waste controls: Should any generators of infectious waste be exempted from management controls? Do small health care operations pose less risk because of the amount of waste they produce? If no generators are exempted, how many generators would be subject to infectious waste controls?

The Agency specifically requests comments on all of the issues included in today's notice. Comments on additional issues related to infectious waste will also be accepted. Once the Agency has reviewed all of the public comments, the Agency plans to evaluate the need for additional information, to collect and examine such information; and to ultimately develop an effective Federal program addressing infectious waste. Upon evaluating the comments solicited in today's notice the Agency will also reevaluate the status of the existing EPA guidance document on infectious waste.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Date: May 27, 1988.

J. Winston Porter,

Assistant Administrator.

[FR Doc. 88-12367 Filed 6-1-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) intends to develop additional simplified (type A) procedures for assessments of natural resource damages resulting from a discharge of oil or release of a hazardous substance. The Department is

requesting public comment and technical information to assist in this endeavor. The Department has already promulgated two types of assessments regulations: A standard procedure for simplified assessments requiring minimal field observation (type A procedures), and procedures for detailed assessments (type B procedures) for use in individual cases. The type A procedure published by the Department of March 20, 1987 (52 FR 9042), provides a simplified assessment procedure, including a computer model, for coastal and marine environments. At that time, the Department stated that, when possible, it would develop additional type A procedures for other environments and natural resources. This Notice is to announce the Department's intent to begin the process of developing a type A procedure for the Great Lakes environment and to request specific technical data to assist in this effort. The Department is also requesting information to assist in determining the scope and technical feasibility of developing type A procedures for other enviroments and natural resources. The natural resource damage assessment regulations are being developed pursuant to Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA).

DATE: Comments will be accepted through July 18, 1988.

ADDRESS: Office of Environmental Project Review, ATTN: NRDA Regulations, Room 4239, Department of the Interior, 1801 C Street NW., Washington, DC 20240 (Regular business hours 7:45 a.m to 4:15 p.m., Monday through Friday)

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington (202) 343–1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act).

Section 107 of CERCLA provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under sections 107(f) and 111(b) of CERCLA. Indian tribes may commence an action as natural resource trustees under section 126(d). Natural resources are generally defined by CERCLA to be: Land, fish, wildlife, biota, air, water, ground water, and drinking water supplies. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance.

Section 301(c), as revised by the Superfund Amendments and Reauthorization Act of 1986 (SARA), calls for the natural resource damage assessment regulations in the following terms:

> (c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under Section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and Section 311(f)(4) and (5) of the Federal Water Pollution Control Act. Notwithstanding the failure of the President to promulgate the regulations required under this subsection on the required date, the President shall promulgate such regulations not later than 6 months after enactment of the Superfund Amendments and Reauthorization Act of 1986.
>
> (2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover

Responsibilities contained in section 301(c) were delegated to the Secretary of the Interior (Executive Order 12316 of August 14, 1981, replaced by Executive Order 12580 of January 23, 1987). The Department published a final rule that provides the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases, otherwise known as the "type B" procedures (August 1, 1986, 51 FR 27674). Five final type B technical information documents have been prepared in conjunction with the development of the type B assessment procedures (Notice of Availability issued on November 16, 1987, 52 FR 43763). The Department has published a final rule that contains standard procedures for simplified assessments, known as the "type A" procedures (March 20, 1987, 52 FR 9042). The type A procedure in that final rule is for use in coastal and marine environments and includes the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). The final rule to amend 43 CFR Part 11 to conform with amendments to CERCLA brought about by SARA was published by the Department on February 22, 1988 (53 FR 5166). Finally, technical corrections to the NRDAM/CME were published on March 25, 1988 (53 FR 9769). These rules together comprise the natural resource damage assessment regulations, codified at 43 CFR Part 11.

II. Discussion

The Department is announcing its intent to initiate the development of a type A procedure for the Great Lakes environment that is consistent in concept to that which has been developed for coastal and marine environments. The Department is requesting specific technical information pertinent to the natural resources and environments of the Great Lakes to assist in this endeavor. The Department is also proceeding to evaluate the scope and technical feasibility of additional type A procedures that could be developed. The Department is, therefore, seeking public comment on the need for further type A procedures, the environments and natural resources of concern to the public, and the availability of technical data necessary to support such type A procedures. Over the course of developing the natural resource damage assessment regulations, beginning with the Advance Notice of Proposed Rulemaking published in January of 1983 (see 48 FR 1084), the Department has received numerous general comments on the issue of developing type A procedures for various environments and natural resources. These comments have contributed to decisions to date and need not be repeated.

For reference in preparing comments, the Department is providing a brief summary of the natural resource damage assessment process and specific

discussion regarding the current type A procedure for use in coastal and marine environments. It should be noted that the natural resource trustee has the option of using the rules or of performing an assessment based on some other procedure. However, assessments performed by Federal or State natural resource trustees in accordance with 43 CFR Part 11 will be given a rebuttable presumption in an action to recover damages. The rules, as codified at 43 CFR Part 11, use a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment performed pursuant to the rule are appropriate, necessary, and sufficient to assess damages for injuries to natural resources. The major phases in the assessment process for both type A and type B procedures are: (1) The Preassessment phase; (2) the Assessment Plan phase; (3) the Assessment phase; and (4) the Post-assessment phase. The discussion that follows describes the progression of these phases through a type A assessment using the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME).

The Preassessment phase usually begins with the notification to the natural resource trustee of a discharge or release, although it may begin with the detection by the natural resource trustee of a discharge or release. During the Preassessment phase, the trustee must perform a preassessment screen to establish that a CERCLA or CWA-covered incident has occurred and that resources of the trustee may have been affected. A preassessment Screen Determination is required to determine whether to proceed with further assessment actions.

If the Preassessment Screen Determination indicates that further actions are warranted, the trustee may proceed to the Assessment Plan phase. The trustee must develop an Assessment Plan before initiating an assessment. The trustee is also required to coordinate with other co-trustees, to make reasonable efforts to identify and involve the potentially responsible party, and to offer the public an opportunity to review the Assessment Plan. The Assessment Plan must document the decision to conduct a type A natural resource damage assessment, including, but not limited to, the specific parameter values to be used as data inputs in the application of the NRDAM/CME. For the NRDAM/CME, these parameter values include, for example, the mass of the material spilled, depth of the water column, wind speed and direction, and quantity of material cleaned up. Other parameter values are also required that define the boundaries of the study area and its ecological characteristics.

After the trustee develops the Assessment Plan, he may proceed with the assessment phase, which, for type A assessments, is carried out by the NRDAM/CME, based upon the user input parameter values identified in the Assessment Plan and the interactive technical data bases contained within the NRDAM/CME. The NRDAM/CME consists of interactive submodels for physical fates, biological effects, and economic damages. The interaction of the physical fates and biological effects submodels determines injury. the NRDAM/CME determines injury as a result of: (1) Direct mortality to adult, juvenile, and larval biota due to toxic concentrations of the spilled substance; and (2) indirect mortality to adult, juvenile, and larval biota due to a loss of foodstuff from the food web. The biological data base within the NRDAM/CME provides data on the biological populations within the ecological system of the NRDAM/CME study area. The submodel calculates losses to biological populations through the period of resource recoverability.

The economic damages submodel calculates dollar amounts for compensation for injuries based on use values. An economic data base is contained in the NRDAM/CME that uses both market and nonmarket prices for the services provided by the natural resources. The NRDAM/CME calculates damages for losses resulting from both direct and indirect mortality to biota. The NRDAM/CME also calculates damages due to the closure of a fishing area, hunting area, or public beach due to the discharge or release. The extent of an area subject to closure is a data input made by the user of the NRDAM/CME, based upon the actual area closed due to the discharge or release.

Upon completion of the NRCAM/CME computations, the user is returned to the general natural resource damage assessment process. The NRDAM/CME provides a printed output that summarizes the mathematical computations performed to derive the damage amount. The printed output of the NRDAM/CME provides the documentation of the results of the assessment and is to be included within the Report of Assessment.

When the natural resource damage assessment is complete, several post-assessment actions are required. A Report of Assessment is compiled that includes the documentation of all determinations made during the assessment, data collected, and the printout of the NRDAM/CME application(s). The Report of Assessment becomes the administrative record of the natural resource damage assessment. The trustee then presents a demand for damages to the potentially responsible party (PRP), and the PRP is given the opportunity to respond to the demand. Any damage awards are to be placed in a separate account for use by the trustee to restore or replace the natural resources injured by the discharge or release. The Trustee must develop a Restoration Plan to document the actions that are planned to restore or replace the injured resource. The Plan must be developed based on the amount of the damage award.

A detailed explanation of the NRDAM/CME and its data bases has been provided in the technical report "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," Volumes I and II (referred to as the NRDAM/CME technical document, and available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB87-142485; ph: (703) 487-4650). Additional discussion of the NRDAM/CME, as well as its applications and limitations, has been given in the preamble to the final type A rule published at 52 FR 9042 (March 20, 1987).

III. Conclusion

This Notice is to announce the Department's intent to begin the process of developing a type A procedure for the Great Lakes environment. In order to facilitate the development of a type A procedure for the Great Lakes, the Department is requesting specific information and data pertinent to the environments of the Great Lakes. Of particular interest are those studies and available data bases regarding the biological populations and other natural resources of the Greak Lakes systems, studies and data concerning services provided by the natural resources of the Great Lake systems, studies and data on the economic values of the identified natural resources, relevant chemical and physical properties of the Great Lakes, and pertinent chemical, physical, and toxicological properties of oils and hazardous substances in Great Lakes waters. Commenters are encouraged to review the chemical, biological, and economic data bases contained in Volume II of the NRDAM/CME

technical document when considering the types of data that may be pertinent to a type A procedure for the Great Lakes environment.

The Department is also seeking public comment on: (1) The need for further type A procedures; (2) the environments and natural resources of concern; and (3) the availability of technical information and data necessary to support the development of additional type A procedures. These three areas for comment are explained in greater detail in the following paragraphs.

Over the past several years, the Department has received numerous general comments pointing to a need for the development of additional type A procedures for other environments and natural resources. Although type A procedures are intended to be simple to use, the development of such procedures is complex, requiring a significant commitment of effort by the Department. In undertaking the commitment to develop additional type A procedures for other environments and natural resources, the Department wishes to be assured that such an effort incorporates the needs expressed by and is of benefit to the public. This is of particular concern as the type A procedures developed are for optional use by the natural resource trustee. Accordingly, the Department is requesting comment in this regard.

The Department is asking for suggestions as to other environments and natural resources for which additional type A procedures may be developed. For example, it may be feasible to develop type A procedures for riverine environments, for lake or wetland fresh water environments, for ground water environments, for soil environments, or for air environments. If the Department proceeds with the development of further type A procedures, it will probably utilize an incremental approach to the time and costs involved. Accordingly, comments would be welcomed about which environments and natural resources would be most amenable to a type A procedure.

The development of efficient and cost-effective type A procedures is dependent upon the availability of pertinent data, information, and methodologies upon which to base those procedures. These items might include, for example, the chemical and physical properties of different oils and hazardous substances, natural resource data such as biological populations of concern, information and studies on the economic values of different resources, and available information on modeling pertinent aspects of the ecological systems and natural resources. It may also be possible to develop a procedure to interactively link or couple different environmental type A procedures together into a common assessment procedure. Commenters should address the availability of such data, information, and methodologies, and, where possible, should forward this data and information to the address given at the front of this Notice.

While evaluating the information received, the Department will proceed with the development of a type A procedure for the Great Lakes environment.

Dated: May 27, 1988.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88-12348 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-RG-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[CC Docket No. 88-245; RM-6013; FCC 88-169]

Allocation Method for Unrouted Ship-to-Overseas INMARSAT Telex Traffic

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes the adoption of a new mechanism for the allocation of ship-to-overseas telex traffic transmitted over the facilities of the International Maritime Satellite Organization (INMARSAT). Currently, ship-to-overseas telex messages that are not designated for transmission by a particular U.S. carrier are allocated equally among U.S. carriers that have an interconnection agreement with the Communications Satellite Corporation (Comsat). The NPRM proposes to replace this equal, rotation allocation method with a proportionate-return mechanism. Under this scheme, the amount of telex traffic allocated to a carrier would be dependent upon the volume of INMARSAT traffic the carrier delivered from overseas points to ships at sea. The Commission tentatively concluded that a proportionate-return allocation method based on the volume of overseas-to-ship INMARSAT traffic a carrier generates would create a more fair allocation environment and reward those carriers that develop the maritime telex market.

DATES: Interested parties may file comments on or before July 11, 1988, and reply comments by July 26, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl Sarreals, International Facilities Division, Common Carrier Bureau, (202) 632-7834.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in Common Carrier Docket No. 88-245, FCC 88-169, RM No. 6013 adopted May 9, 1988, and released May 20, 1988.

The full text of this Commission decision is available for inspection and copying during business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M. Street, NW., Suite 140, Washington, DC 20037.

Summary of NPRM

1. MCI Communications Corporations (MCI) filed a petition for rulemaking requesting that the Commission adopt a new mechanism for the allocation of unrouted ship-to-oveseas telex traffic transmitted over the facilities of the INMARSAT. In a 1979 Memorandum Opinion and Order, 71 F.C.C. 2d 1069, the Commission determined that the shipboard originator of a ship-to-overseas telex message should have unrestricted choice of the U.S. carrier that will transmit its message to an overseas point. In those situations where the customer did not choose a carrier, we directed Comsat, the entity responsible interconnecting contracting U.S. service providers with the INMARSAT system, to handle unrouted traffic "in a nondiscriminatory fashion." As a result, Comsat began allocating telex transit minutes among participating carriers on a rotating basis, with each entity receiving an equal share of the unrouted traffic. At that time, we concluded that there was not enough unrouted telex traffic to justify the imposition of a routing mechanism. We stated, however, that we would consider initiating a rulemaking to determine the best allocation method if a significant amount of traffic materialized in the future.

2. Under the approach proposed by MCI, the amount of unrouted ship-to-overseas traffic allocated to a carrier would be dependent upon the volume of INMARSAT traffic the carrier delivered from overseas points to ships at sea.

MCI argued that the rotational method creates little incentive for carriers to develop the market for INMARSAT telex or to keep prices low.

3. Under the present system, shipboard customers originating ship-to-overseas telex messages have the ability to choose among United States carriers on the basis of competitive situations. However, approximately 96 per cent of this traffic is currently unrouted. Shipboard originators of ship-to-overseas telex messages are not availing themselves of the choice among competing United States carriers. Therefore, we conclude that the present volume of unrouted ship-to-overseas telex traffic is sufficient to warrant institution of a rulemaking proceeding to determine an allocation method for future distribution of traffic among carriers interconnecting with Comsat. We note that the concern we expressed in 1979 over the possible additional operational and administrative costs which might stem from the implementation of a Commission imposed traffic allocation method has been ameliorated somewhat by Comsat's desire to rid itself of the operational complexity, transactional costs and unnecessary administrative burdens of the existing rotational traffic allocation mechanism.

4. We tentatively conclude that in the future, unrouted ship-to-overseas telex traffic transiting the United States and handled via INMARSAT space segment should be distributed among participating carriers in proportion to the volume of overseas-to-ship INMARSAT telex traffic each carrier handles. Adoption of MCI's proposal, would make each carrier's competitive success in the marketplace a major factor in the determination of the volume of unrouted ship-to-overseas telex traffic each carrier would receive. Distribution of unrouted ship-to-overseas telex traffic in this manner will reward the carriers' success in the marketplace and, therefore, will provide an incentive for the carriers to increase their competitive efforts. Such a result is consistent with our procompetitive policy.

5. We also seek comment on whether the distribution of unrouted ship-to-overseas telex traffic should be in proportion to the total amount of ship-to-shore telex traffic handled by each participating carrier. Total ship-to-shore telex traffic would include U.S. originating-to-ship telex traffic as well as overseas-to-ship telex traffic transiting the United States. In order to facilitate our consideration of this issue, we request that Comsat provide in its comments the volume of U.S. originated-to-ship telex traffic for the same periods and in the same format and detail as it provided in its ship-to-overseas traffic statement submitted in support of MCI's petition.

6. We request further, that parties indicate whether there is any other unrouted telex traffic handled by United States carriers via the INMARSAT system. If such traffic exists, we request that parties address the question of whether such unrouted traffic also should be distributed on a proportionate basis. Finally, we request parties that address the question of how often the share of unrouted ship-to-overseas telex traffic of each participating carrier should be recalculated.

7. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 20 U.S.C. 1221–1223, and found to impose no new or modified information collection requirements on the public.

8. We have determined that section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, does not apply to this rulemaking proceeding because if promulgated it would not have a significant economic impact on a substantial number of small entites.

Ordering Clauses

9. Accordingly, It Is Ordered that a rulemaking proceeding on the captioned matter is instituted under section 4(i) and 303(r) of the Communications Act of 1934, as amended, section 504 of the Interational Maritime Satellite Telecommunications Act, 47 U.S.C. 752(b)(6), section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and §§ 1.407 and 1.411 of the Commission's rules, 47 CFR 1.407 and 1.411, to determine the appropriate mechanism for allocating unrouted INMARSAT telex traffic among interconnecting U.S. carriers.

10. It Is Further Ordered that, pursuant to § 1.415 of the Commission's Rules, interested parties may file comments on the matter raised in this notice by July 11, 1988, and reply comments by July 26, 1988. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five copies of all statements, briefs, comments and reply comments shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. All such filings will be available for public inspection in the docket reference room at the Commission's Washington, DC offices. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration ideas and information not contained in comments, provided that such information or a writing indicating its nature and/or source is placed in the public file, or is otherwise publicly available, and provided that the Commission's reliance on such information is noted in the Order.

11. It Is Further Ordered that the Secretary of the Commission shall cause a summary of this Notice of Proposed Rulemaking to be published in the **Federal Register.**

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–12388 Filed 6–1–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383, 391, and 392

[FHWA Docket No. MC–128]

RIN 2125–AB79

Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers; Correction of Proposed Rule Preamble; Public Information Forums

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction of preamble to notice of proposed rulemaking; public information forums.

SUMMARY: This document corrects a statement made in the preamble to the notice of proposed rulemaking which defines 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV. This action is necessary to correct an error in the description of State laws. Also, this document announces two public forums to solicit comments from interested persons on proposed revisions to §§ 383.5, 383.51, 391.15, 391.3 and 292.5 of the Federal Motor Carrier Safety Regulations (FMCSRs) that respond to the Commercial Motor Vehicle Safety Act of 1986 (the Act). The revisions would define 0.04 percent as the blood alcohol concentration (BAC) level at or above which a commercial motor vehicle (CMV) operator would be disqualified from operating a CMV under Section 12008 of the Act. The proposal would also require CMV operators with any measured positive BAC to be placed out-of-service for a 24-

hour period in accordance with Section 392.5 of the FMCSRs. Sections 12009 and 12011 of the Act require States to adopt the final sanctions prescribed by the FHWA for CMV operators in order to avoid a withholding of Federal-aid highway funds.

DATES: The correction to the preamble is effective June 2, 1988. See Supplementary Information for public forum dates.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. John Viner, Office of Safety and Traffic Operations, Research and Development, (703) 285–2419, Ms. Jill L. Hochman, Office of Motor Carriers, (202) 366–4001, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:25 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986 (the Act) (Pub. L. 99–570, Title XII, 100 Stat. 3207, 3207–170) was signed into law by the President.

The following correction is made in the preamble that appeared at page 16660 in the **Federal Register** of Tuesday, May 10, 1988 (53 FR 16656) in FR Doc. 88–10482 under the subheading "State Compliance" at the end of the second column: The sentences that read "All States have illegal per se laws have with BAC limits of 0.10 percent or lower, except for one. This State, however, has a presumptive law with a BAC level of 0.10." are revised to read, "All States have illegal per se or presumptive laws with BAC limits of 0.10 percent or lower."

The public forums will be held at 10:00 a.m. (local time) in the following locations:

June 15—Department of Transportation, Room 4234, 400 Seventh Street, SW., Washington, DC 20590

June 21—Denver Federal Center, Lecture Hall A—Building 25, Lakewood, Colorado 80228

Anyone interested in discussing the proposal at the public forums should contact James Griffin at the Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street, SW., Room 3404, Washington, DC 20590 (telephone 202–366–2797).

If possible, persons making statements at the public forums should supply, at the time of the forum, 25 copies of their written statements.

(Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 C.F. R. 1.48)

Issued on: May 31, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 88–12516 Filed 6–1–88; 8:45 am]
BILLING CODE 4510–22–M

Notices

Federal Register
Vol. 53, No. 106
Thursday, June 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 11:00 a.m. on Thursday, June 9, 1988, at the office of Covington and Burling, 1201 Pennsylvania Avenue NW., Washington, DC (Conference Room 1214).

The Committee will meet to discuss a study by Professor Henry H. Perritt, Jr., of Villanova University School of Law, on computer-aided transmission and handling of regulatory documents.

For further information concerning this meeting, contact David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC. (Telephone: 202–254–7065).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,
Research Director.
May 27, 1988.
[FR Doc. 88–12376 Filed 6–1–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 27, 1988

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Marketing Agreement for Vegetables Grown in Texas
One-time reporting
Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 110 responses; 11 hours; not applicable under 3504(h)
Virginia M. Olson (202) 447–5057

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 88–12439 Filed 6–1–88; 8:45 am]
BILLING CODE 3410–01–M

Office of International Cooperation and Development

Cooperative Agreements; Georgia Tech University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

Activity: OICD intends to enter into a Cooperative Agreement with Georgia Tech University to provide partial support funding for collaborative international assignment in support of agricultural development in the Philippines.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds in fiscal year 1988 (FY1988) to enter into a cooperative agreement with Georgia Tech University to collaborate in international agricultural development in the Philippines. The scope of the effort will include the participation of the International Technology Development office within the Georgia Institute of Technology. It is anticipated that Georgia Tech will be able to assess the efficacy of certain experimental methodologies used in agriculture sector analysis.

Approximately $22,000 will be available in FY1988 to Georgia Tech to conduct collaborative analysis under the auspices of the Mission of the Agency for International Development in the Philippines.

Assistance will be provided only to the Georgia Tech, which is contributing resources and experience to conduct the analyses. Funds provided by OICD will be used to supplement costs of supplies, communications, analyses, a technology specialist, and travel. OICD and USAID/Manila will provide partial housing support in the Philippines. The Ministry of Agriculture in Manila will provide access to data and liaison with the Philippines agricultural sector.

Based on the above, this is not a formal request for application. Funds estimated at $22,000 will be available in FY1988 to support this work. This constitutes funds believed to be sufficient for the entire cooperative effort. Funds in future fiscal years will not be required.

Information on proposed Agreement #58–319R–8–029 may be obtained from the undersigned at the following address: USDA/OICD/Management Services Branch, Washington, DC 20250–4300.

Nancy J. Croft,

Contracting Officer.

Date: May 27, 1988.

[FR Doc. 88–12373 Filed 6–1–88; 8:45 am]

BILLING CODE 3410-DP-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 19–88]

Foreign-Trade Zone 29, Louisville, KY; Application for Subzone for Hitachi and Auto Components Plant, Harrodsburg, KY; Extension of Comment Period

The period for comments on the above case, involving proposed special-purpose foreign-trade subzone status for the auto components manufacturing plant of Hitachi Automotive Products (USA), Inc., in Harrodsburg, Kentucky (53 FR 12051, April 12, 1988, is extended to June 28, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. The public record will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 26, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–12409 Filed 6–1–88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–122–401]

Red Raspberries From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 25, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on red raspberries from Canada. The review covers three processors/exporters of this merchandise covered by the order and the period December 18, 1984 through May 31, 1986.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the petitioner and the respondents. Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results with respect to Mukhtiar & Sons Packers, Ltd. and Clearbrook Packers, Inc. and are unchanged with respect to Jesse Processing, Ltd.

EFFECTIVE DATE: June 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dionne C. Calloway or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 1934) the preliminary results of its administrative review of the antidumping duty order on red raspberries from Canada (50 FR 26019, June 24, 1985). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of fresh and frozen red raspberries packed in bulk containers and suitable for further processing. Fresh raspberries are currently classified under item numbers 146.5400 and 146.5600 of the Tariff Schedules of the United States Annotated (TSUSA), and frozen raspberries under item number 146.7400 of the TSUSA. These products are currently classifiable under Harmonized System item numbers 0810.20.90, 0810.20.10 and 0811.20.20.

The review covers three processors/exporters of fresh and frozen red raspberries to the United States, Jesse Processing, Ltd. ("Jesse"), Mukhtiar & Sons, Ltd. ("M&S"), Clearbrook Packers, Inc. (Clearbrook"), and the period December 18, 1984 through May 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioners and the respondents.

Comment 1: The respondents argue that the Department failed to make a distinction between juice stock raspberries and jam stock raspberries. Differences in production of the two grades result in different costs of production. Therefore, in determining whether there are sales below cost, the price of juice (or jam) stock should only be compared with the cost to produce juice (or jam) stock.

Department's Position: We disagree. We consider the claim to be untimely. Moreover, the respondents' assertion that no processing costs are associated with juice stock berries is unsubstantiated. Therefore, we have not calculated separate costs of production for the two types of berries.

The respondents first raised this argument in their prehearing brief. The Department cannot now adjust for differences in physical characteristics which respondents did not claim prior to the preliminary determination.

The above notwithstanding, the respondents' request that we recognize cost differences between juice stock and jam stock raspberries is unsubstantiated. In calculating the cost of production, the Department cannot accept, without evidence, that the bulk of processing costs is associated with the production of jam stock raspberries rather than juice stock raspberries. Our decision is consistent with the Court of International Trade's remand which stated that "Without evidence indicating that cost of production was affected by a cost distinction allocated between the two grades of raspberries at the grower level, the court cannot conclude that the ITA did not act in accordance with law by comparing that cost of production with the average price Jesse received on home market sales of the lower-grade berries." *Washington Red Raspberry Commission v. United States,* Slip Op. 87–74 at 5 (June 26, 1987). However, where possible, we have compared prices of juice (jam) stock to juice (jam) stock as explained in the response to comment 3.

Comment 2: The respondents assert that income related to a processor's or farm's raspberry growing or processing operations should be used to offset expenses. They maintain that during the fair value investigation it was decided that offsetting expenses with income obtained from such activities as rentals and sales of buildings, equipment and

packing materials used in raspberry operations was allowed. The respondents also assert that income to a farm from crop insurance was specifically used to offset expenses.

Department's Position: We disagree. Since the respondents failed to demonstrate how income from crop insurance as well as other sources of income were directly related to raspberry production, as distinguished from strawberry or blueberry production, we did not allow this offset nor any others that were not substantiated. It is the Department's policy to place the burden on the respondent to tie income and expenses to the production of the particular commodity under review. The respondent should also detail with clarity and specificity the exact nature of the offset claimed.

During the fair value investigation, income from the Farm Insurance Income Program (FIIP) and government wage rebate benefits were included as offsets to cost since these benefits were directly attributable to raspberry production at that time. In contrast, the Department excluded other income which was not considered directly related to raspberry production, such as income from the sale of fertilizer and chemicals and income from property rentals (50 FR 19769, May 10, 1985).

Comment 3: Clearbrook maintains that the Department erred in comparing one August 1985 U.S. sale of juice stock raspberries with a monthly weighted average price of jam stock raspberries in the home market. Clearbrook argues that the Department should either make an adjustment for physical differences or alternatively, using the "90 back, 60 forward" rule, compare the August 1985 U.S. sale to a September 1985 home market sale of juice berries.

Department's Position: We agree. Where possible, the Department has compared U.S. sales of juice stock raspberries with such berries in the home market. To determine contemporaneous sales in the home market, the "90 days back, 60 days forward" rule was used. For Clearbrook, the Department compared the August 1985 U.S. sale of juice stock raspberries with a September 1985 home market sale of juice stock raspberries.

Comment 4: Jesse argues that the Department committed an error in methodology when it did not compare Jesse's November 1985 juice stock sale in the U.S. with a September 1985 juice stock sale in the home market. Alternatively, Jesse maintains that if a weighted average of sales from one crop year were used, an average of Jesse's August and September juice stock sales could have been used for the home market comparison.

Department's Position: We disagree. The Department did not compare Jesse's November 1985 juice stock sale in the U.S. with the September 1985 juice stock sale in the home market because the September sale's price fell below the cost of production and was therefore disregarded. Since there were no contemporaneous above-cost sales, foreign market value for the November 1985 sale was based on constructed value. Moreover, the Department did not compare the November 1985 sale to a weighted average of sales from a particular crop year since all home market weighted averages are calculated on a monthly, not on a yearly basis, which is the Department's normal methodology in administrative reviews.

Comment 5: Jesse contends that the Department made an error in computation when calculating the cost of production. Packing cost should not have been added to cultivation and harvesting costs for Jesse Farms and then added a second time to processing costs for the processor.

Department's Position: We agree. Packaging costs, since they are a part of processing costs, should only have been added to the processor's cost of production and not to that of the farm. Therefore, we reduced our cost of production figure by the double-counted amount. Despite this correction, the result was that there was no change in the original weighted-average margin computed for Jesse. The sales that fell below the cost of production figure as the Department calculated it initially, still fall below the revised cost of production figure. These sales were again disregarded in our analysis as only sales above cost were used to determine the foreign market for red raspberries.

Comment 6: Jesse argues that the Department erred when it failed to use costs incurred in 1984 for sales made before July 1985. Since raspberries are harvested during the month of July, any sales made before July are of berries harvested the previous year. Jesse maintains that in comparing cost of production with home market sales prices, care must be taken to compare costs to produce 1984 berries with prices received for 1984 berries.

Department's Position: The Department cannot analyze information which is not on the record prior to the preliminary determination. Jesse did not provide any information detailing the cost of production berries sold before July 1985, until it filed its brief, after the preliminary determination. The Department, therefore, utilized the cost data Jesse provided in its questionnaire response as the best available information.

Comment 7: Jesse maintains that in the case of its exporter's sale price sales, the Department should deduct home market selling expenses to compute foreign market value since selling expenses were deducted from U.S. prices.

Department's Position: We agree. The Department did deduct home market selling expenses in its computation of foreign market value.

Comment 8: M&S argues that the Department erred when it failed to adjust constructed value for differences in circumstances of sale. Since the Department deducted credit and selling expenses from certain U.S. sales, credit and selling expenses should also have been deducted from the constructed value when the sales were compared.

Department's Position: We agree. The Department has adjusted the constructed value for a portion of finance expenses attributable to costs of providing credit to purchasers and for cold storage fees.

Comment 9: The respondents argue that the "10%–90%" rule is inappropriate in this case and that a rule designating that 50% of below-cost sales be the benchmark for disregarding those sales is more appropriate. They maintain that in the case of red raspberries, which are a perishable agricultural product, the Department should not have assumed that a producer who sells his product below the cost of production cannot recoup his costs in a reasonable period of time in the normal course of trade.

Department's Position: We disagree. When producers lack the ability to control output, at least in the short-term because they cannot store their production, the Department has disregarded below-cost home market sales when such sales constituted 50% of more of a grower's total sales of the produce under consideration. In the red raspberry market, in contrast to markets for fresh vegetables, fall-harvested white potatoes, or fresh cut flowers where the 50% rule was used, processors/growers do have the ability to and often do control the sale of their output, at least in the short-term, by storing their output in a frozen state. Therefore, the Department used 10% in lieu of 50% as the benchmark for determining if below-cost sales were in substantial quantities.

The respondents submitted sales and cost data for the period of review. Since agricultural costs depend on yields and since future yields are unpredictable because they depend on unforeseeable

variables such as weather and disease, recovery of costs over time is unpredictable. Moreover, since these costs are associated only with production during the crop year, rather than being incurred for the benefit of future years' production, they should be recovered during the current crop year.

Comment 10: The petitioners contend that the Department may not disregard the actual prices that Jesse and M&S paid to their related growers for raspberries because the Department is bound by the holding of the Court of International Trade ("CIT") in *Washington Red Raspberry Commisison* v. *United States*, 657 F. Supp. 537 (CIT 1987).

Department's Position: We disagree. In *Washington Red Raspberry Commission*, the Department explained that it could not use the transaction prices paid by Jesse and M&S because these processors had no sales from unrelated growers to use as a benchmark for market prices. The Court did not dispute the Department's legal reasoning; it merely decided that the record showed there were transactions between unrelated parties with which to compare the prices Jesse and M&S paid to their related growers.

The Department has since reconsidered its approach to cost of production, however, and has determined that it makes more sense from an economic standpoint, to use related parties' costs instead of transfer prices. First, pricing between related parties may be an internal decision not dictated by market forces. Second, such prices, if they do reflect market values, could include profit, which should accrue, at least in part, to the related purchaser who produces the end product. Thus, using the growers' cost insures that profits are not included in the cost of production.

There is nothing in the statute that precludes this methodology. The law does not mandate testing related party prices against market prices when the Department calculates cost of production, in contrast to the statutory requirements for constructed value calculations. *Compare* 19 U.S.C. 1677(b) and 19 U.S.C. 1677b(e). Contrary to the petitioners' argument, this issue has not been finally decided by any court and the Department is not bound by the cited decision.

Comment 11: The petitioners assert that the Department is bound by the CIT's holding that the drums and pails in which the raspberries are contained are an integral part of the product and must be included in the cost of raspberries.

Department's Position: The Department has appealed the CIT's decision with respect to the treatment of pails and drums. The Department does not consider container costs to be costs of materials under section 773(e)(1)(A) of the Act, as seeds, water, and fertilizer would be. Rather, the Department considers costs of pails and drums to be costs of packing the raspberries for shipment to the United States under section 773(e)(1)(c) of the Act. Until the Court of Appeals decides this issue, the Department is not following the CIT ruling.

Final Results of Review

Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results of review for M&S and Clearbrook and remain unchanged for Jesse. We determine that the following margins exist for the period December 18, 1984 through May 31, 1986.

Processor/exporter	Weighted-average margin (percent)
Jesse Processing, Ltd	7.65
Mukhtiar & Sons Packers, Ltd	.28
Clearbrook Packers, Inc	.002

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for M&S and Clearbrook are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit for these firms.

For any shipments from the remaining known processors and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the antidumping duty order for each of those firms (50 FR 26019, June 24, 1985). For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments of red raspberries occurred after May 31, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 7.65 percent shall be required.

These deposit requirements are effective for all shipments of Canadian fresh or frozen red raspberries entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Date: May 26, 1988.

[FR Doc. 88-12410 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of California, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Material's Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-176. *Applicant:* University of California, San Diego, Department of Medicine, M013-J, La Jolla, CA 92093. *Instrument:* Cardiac Ventricular Volume Measuring Device Via Conductance, Model SIGMA-5. *Manufacturer:* Leycom, The Netherlands. *Intended Use:* The instrument will be used to quantitate cardiac ventricular volume during a series of regional function studies. Intervention will include ischemia and assorted positive and negative ionotropic agents. Experiments will involve acute dogs as an animal model, and involve placement of a cardiac conductance catheter in order to make volumetric calculations. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88-177. *Applicant:* The Johns Hopkins University, School of

Hygiene and Public Health, Department of Biochemistry, 615 North Wolfe Street, Baltimore, MD 21205. *Instrument:* Rapid-Mix-Rapid-Quench Apparatus, Model PQ–53. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of yeast pyruvate decarboxylase (PDC), Thiamine pyrophosphate (TDP) and pyruvate. Experiments will involve using isotope probes to determine whether C(2)-proton transfer from thiamine (TDP) to form the thiazolium ylide or ylide addition to substrate is rate limiting for PDC. Analysis of enzymic and nonenzymic kinetic isotope effects provides details about the relative properties of sequential transition states. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88–178. *Applicant:* Children's Hospital, Neuroscience Department, Enders 2, 300 Longwood Ave., Boston, MA 02173. *Instrument:* Electron Microscope, JEM-1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument is intended to be used to study the ultrastructure, development, growth and alterations in the nervous system. The experiments will be conducted in order to understand how neuroanatomical structure relates to the function of the nervous system in combination with biochemical and physiological experiments performed prior to fixation and preparation for electron microscopy. In addition, the instrument will be used to train several graduate students, residents and postdoctoral fellows on a one-to-one basis in use of the instrument for their studies of the nervous system. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88–179. *Applicant:* North Carolina State University, Box 7212, Raleigh, NC 27695. *Instrument:* Isotope Ratio Mass Spectrometer, Model Delta E. *Manufacturer:* Finnigan-MAT, West Germany. *Intended Use:* The instrument is intended to investigate the processes which control the isotopic composition of methane. Dissolved methane and methane fluxing from coastal sediments will be analyzed. Natural variations in $^{13}C/^{12}C$ and H/D ratios will be correlated with rates of specific processes such as methane oxidation, CO_2 reduction and acetate cycling. The second research initiative will involve methods development of inter- and intramolecular C and N isotope measurements. Such measurements will be used as a method of identifying the sources and fates of organic compounds in marine sediments. The primary application of the measurement will be to study the processes responsible for the preservation and burial of organic matter in the marine environment. *Application Received by Commissioner of Customs:* April 19, 1988.

Docket Number: 88–180. *Applicant:* State University of New York at Buffalo, Department of Chemistry, Main Street, Ascheson Hall, Buffalo, NY 14214. *Instrument:* Stainless Steel Chambers. *Manufacturer:* Technoscience, France. *Intended Use:* The instrument will be used for the study of the production of intense beams of molecular clusters. Ions will be generated via excitation from an excimer laser within these clusters and their chemistry will be studied. Study of chemistry within clusters will show the direct effect solvation has on chemical dynamics. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88–181. *Applicant:* Virginia Commonwealth University, Medical College of Virginia, Department of Physiology, Room 3–012B, Sanger Hall, 1101 E. Marshall Street, Box 551, Richmond, VA 23298–0551. *Instrument:* Micoforge, Model MF–83. *Manufacturer:* Narishige Scientific instrument Laboratory, Japan. *Intended Use:* The instrument will be used for studies of electrical activity of isolated heart cells. Experiments will be conducted to determine single ionic channel permeabilities and ion distribution with patch clamp technique in order to understand how ionic distributions are related to electrical activity of the heart. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88–182. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* High Resolution Ion Energy Analyzer and High Precision Sample Manipulator. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* Studies of the atomic structure of surfaces of metals, semiconductors and insulators, both in their atomically clean form and after deposition of small amounts of adatoms. In addition, the instrument will be used by graduate students, post-doctoral candidates and undergraduates for their training and for doing their thesis research. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88–183. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* 400 kV Heavy Ion Accelerator. *Manufacturer:* High Voltage Engineering Europa, The Netherlands. *Intended Use:* Channeling and blocking studies of the atomic structure of surfaces of metals, semiconductors and insulators, both in their atomically clean form and after deposition of small amounts of adatoms. There will also be back scattering studies of thin films on such surfaces and ion implantation. In addition, the instrument will be used by graduate students, post-doctoral candidates and undergraduates for their training and for doing their thesis research. *Application Received by Commissioner of Customs:* April 20, 1988.

Docket Number: 88–184. *Applicant:* University of Hawaii, Biological EM Facility, PBRC, Synder 118, 2538 The Mall, Honolulu, HI 96822. *Instrument:* Cryo Stage and Transfer System. *Manufacturer:* Carl Zeiss, Inc., West Germany. *Intended Use:* The instrument will be used in various studies to view viruses, isolated cellular organelles and vesicles, liposomes and sections of whole cells in an artifact-free state. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88–185. *Applicant:* Geisinger Clinic, Weis Center for Research, North Academy Avenue, Danville, PA 17822–2600. *Instrument:* Electron Microscope, Model JEM–1200/EX/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructure of heart, blood vessel, nerve and other cells and purified macromolecules derived from these cells. Experiments are aimed at answering specific basic questions about the structure, function or regulation of various cell types or organ systems. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88–186. *Applicant:* Texas A&M Research Foundation, Box 3578, College Station, TX 77843. *Instrument:* Spectrascan Accessory, MG–3000. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument is an accessory to an existing stopped-flow spectrophotometer which will be used to monitor rapid spectral changes upon initiation of enzyme-catalyzed reactions. Studies will involve investigations of the reactions catalyzed by a bacterial luciferase, carbamyl phosphate synthetase and D-ala, D-ala ligase. Typical stopped-flow mixing experiments will be conducted to elucidate the mechanisms of enzyme action. This will be accomplished by measuring the rate constants for the formation and decay of reaction intermediates and the chemical identification of reaction intermediates via the spectral changes. In addition, the instrument will be used in Chemistry 491 and 691 to teach students to solve

problems of a biochemical nature and to elucidate the molecular details of enzyme catalyzed reactions. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88–187. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, Livermore, CA 94550. *Instrument:* NMR Spectrometer, Model MSL. *Manufacturer:* Bruker Analytik GmbH, West Germany. *Intended Use:* Studies of solutions of organic, inorganic and biological molecules and solid state materials such as polymers, composites and geological samples. The investigations will provide rapid, nondestructive analysis of high sensitivity for a broad spectrum of materials. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88–188. *Applicant:* University City Science Center, 3624 Market Street, Philadelphia, PA 19104. *Instrument:* Mortar and Pestle Mill System with Accessories. *Manufacturer:* The Pascall Engineering Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of trimmed, superficially fat-free beef heart. Experiments will involve the study of the mechanism of electron transport and thus energy produced in normal and in diseased tissue, especially in malignant tissue in which the growth is uncontrolled. The energy from these is mostly derived from electron transfer. *Application Received by Commissioner of Customs:* April 25, 1988.

Docket Number: 88–189. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Route 9W, Palisades, NY 10964. *Instrument:* Thermal Ionization Double-Focusing Mass Spectrometer, Model VG Isolab 120. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* The instrument will be used for measurement of abundance of naturally-occurring radiogenic and non-radiogenic isotopes, and enriched-isotope spikes added to natural samples for determination of element concentrations using stable-isotope dilution techniques. The materials under study are natural rock and mineral samples; chemically separated elements including but not limited to K, Tb, Sc, Ba, Sr, Rare earth elements, U, Th, Pb, Re, Os. In addition, the instrument will be used for the training of graduate students in methods of geochemical analysis. *Application Received by Commissioner of Customs:* April 26, 1988.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–12408 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–DS–M

Materials Technical Advisory Committee; Open Meeting

A Meeting of the Materials Technical Advisory Committee will be held June 23, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises of Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Introduction of New Committee Members.
5. Presentation by General Electric Company on State-of-the-Art of High Temperature Materials in the Aircraft Industry.
6. Presentation by Alcoa on Use of Aluminum Powder and the Equipment and Technology Necessary for Its Production.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: May 27, 1988.

Betty A. Ferrall,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 88–12377 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications; Columbus, OH; Correction of Closing Date

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice of correction of closing date.

SUMMARY: This notice corrects the closing date for applications to operate a MBDC in the Columbus, Ohio Standard Metropolitan Statistical Area (SMSA) previously published in the **Federal Register** May 16, 1988, (Volume 53, Number 94, pages 17236, 17237.

The new closing date is July 1, 1988.

Date: May 26, 1988.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 88–12343 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–21–M

National Bureau of Standards

Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Tuesday, June 28, 1988, from 8:30 a.m. to 5:30 p.m., and Wednesday, June 29, 1988, from 8:30 a.m. to 1:30 a.m., in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland; from 3:00 p.m. to 4:00 p.m. in Room 5854, Department of Commerce, Washington, DC.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301–975–2411.

Date: May 26, 1988.

Ernest Ambler,

Director.

[FR Doc. 88–12336 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserves; Availability of Findings

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Florida, Pennsylvania, Rhode Island, New Hampshire, and New York Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Date: May 27, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88–12414 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–08–M

Intent To Evaluate State Coastal Zone Management Programs

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resources Management (OCRM), announces its intent to evaluate the performance of the Michigan Coastal Management Program (CMP); and New Jersey CMP; and the Ohio (Old Woman Creek) National Estuarine Research Reserve (NERR); California (Elkhorn) NERR; Rhode Island NERR (Narragansett); and North Carolina NERR; through September 30, 1988. Evaluation of coastal management program will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. Evaluation of the National Estuaurine Research Reserves will be conducted pursuant to section 315(f) of the CZMA which requires the periodic review of the performance of each reserve with respect to its operation and management. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of these programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673–5104).

Federal Domestic Assistance Catalog 11.419)

Date: May 27, 1988.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 88–12415 Filed 6–1–88; 8:45 am]

BILLING CODE 3510–08–M

Endangered and Threatened Species; Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reopening of comment period; reconsideration of petition to list Sacramento River Winter-Run Chinook Salmon under the Endangered Species Act.

SUMMARY: NMFS is reconsidering its decision not to list the Sacramento River winter-run chinook salmon as a threatened species under the Endangered Species Act. To ensure consideration of the best scientific and commercial data available, the comment period is being reopened for a period of 30 days. Comments are requested on all relevant data, including information generated before and after the decision and new information concerning the status of the species and any present or potential threats to the species.

DATE: Comments must be received by July 5, 1988.

ADDRESS: Comments should be mailed to Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NMFS, NOAA, Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Patricia Carter (Office of Protected Resources, F/PR2, NMFS, Washington, DC 20235, 202–673–5351) or James Lecky (NMFS, Southwest Region, 300 S. Ferry St., Terminal Island, CA 90731, 213–548–6664).

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1985, the American Fisheries Society (AFS) petitioned NMFS to add the winter run of chinook salmon *(Oncorhynchus tshawytscha)* in the Sacramento River in California to the U.S. List of Endangered and Threatened Species. The Assistant Administrator for Fisheries, NOAA, accepted the petition and conducted a status review to determine whether a listing was warranted. Comments were

received through April 14, 1986. The results of the status review, along with a Notice of Determination, were published on February 27, 1987 (52 FR 6041). The Notice stated NMFS' belief that the primary threat to the species is the barrier to upstream migration presented by the Red Bluff Diversion Dam (RBDD), which prevents a majority of the run from reaching preferred spawning grounds above the dam. Based on an agreement with the Bureau of Reclamation, U.S. Department of the Interior, to raise the gates at RBDD to facilitate fish passage during the period that winter-run are migrating upstream and taking into consideration recovery and conservation measures that other affected State and Federal resource agencies agreed to adopt and implement, NMFS determined that listing was not warranted. In response to NMFS' decision, the Sierra Club Legal Defense Fund, Inc., on behalf of the AFS, filed suit seeking an order from the court to list the winter-run as threatened.

Since the original determination was made, significant new data concerning Sacramento River winter-run chinook salmon have become available. These data include: (1) Recently issued water forecasts for the upcoming water year which predict conditions highly unfavorable for salmon survival; (2) recently published information identifying previously unknown winter-run spawning habitat in proximity to RBDD; (3) an evaluation of dam operations on winter-run habitat and spawning success; (4) the results of the first monitoring report on the effects of raising the gates at RBDD; and (5) recent analysis of climatic events described in the paragraph below.

During the 1987 water-year, drought resulted in elevated water temperatures. Suitable water temperatures are an essential requirement for successful salmon reproduction. Drought conditions during 1987 caused water temperatures to rise to the degree that conditions were lethal to early life stages of the winter-run population. The California Department of Fish and Game estimated that about 10 percent of the winter run spawn was affected by the elevated temperatures.

Based on these and related factors, NMFS has determined that a substantial basis exists for reconsideration of the AFS petition. This action will encompass a complete review and appropriate update of the status of the species and a reassessment of the factors affecting the species including: (1) A review of all new information that has become available since the initial decision, (2) the results of any actions that have been taken or that are underway to reverse the population decline, and (3) an evaluation of the status of any proposed recovery measures or conservation practices to restore the population or that will affect its recovery, including: Construction, pollution control, dam operation, gravel mining, bank riprapping, fish hatchery planning, water temperature control and other studies, programs and relevant activities. Upon completion of this process, the agency will make a new determination as to whether listing is warranted. Notice of the new decision will be published in the **Federal Register**, along with an evaluation of the reasons for the decision and a summary of the data on which it is based.

Dated: May 26, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-12416 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Drs. Kenneth S. Norris and William T. Doyle (P20I)

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicants:* Dr. Kenneth S. Norris and Dr. William T. Doyle, Long Marine Laboratory, University of California, 100 Shaffer Road, Santa Cruz, California 95060.

2. *Type of Permit Requested:* The applicants request authorization to capture and temporarily maintain two Atlantic bottlenose dolphins *(Tursiops truncatus)* for cognition research. They will be maintained at Long Marine Laboratory for approximately six (6) years, then returned to Florida and released at the original capture site.

3. *Period of Activity:* One (1) year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: May 27, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

[FR Doc. 88-12417 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 16 June, 1988 at 10:00 a.m. at the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (556-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, May 23, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88-12324 Filed 6-1-88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: May 27, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 331 is being increased for carryforward and swing.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 24504, published on July 1, 1987; 52 FR 49465 and 52 FR 49668, published on December 31, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on January 1, 1988 and extends through June 30, 1988.

Effective on May 27, 1988, the directive of December 28, 1987 is hereby amended to adjust the limit for cotton textile products in Category 331 to 283,147 dozen pair [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of the Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12380 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 3, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: In conformity with the Interim Category System, the 1988 limits for certain wool and man-made fiber textile products in Group II are being adjusted under the terms of the current bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 53 FR 62 published in the **Federal Register** on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 30, 1987, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

Effective on June 3, 1988, the directive of December 30, 1987 is amended to include adjustments to the previously established restraint limits for wool and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of November 18, 1982, as amended and extended.

Category	Adjusted 12-month limit [1]
Sublevels within Group II	
433	12,844 dozen.
435	20,412 dozen.
442	38,224 dozen.
443	48,036 numbers.
444	181,020 numbers.
447/448	17,681 dozen.
633/634/635	1,552,493 dozen of which not more than 1,036,640 dozen shall be in Categories 633/634 and not more than 748,728 dozen shall be in Category 635.
642	633,614 dozen.
643	576,120 numbers.
644	2,066,952 numbers.
647	2,591,354 dozen.
648	3,063,771 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

exception to the rulemaking provisions 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12379 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirements for Certain Cotton and Man-Made Fiber Apparel Products Produced or Manufactured in Sri Lanka

May 27, 1988.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Issuing a directive to the Commissioner of Customs amending export visa requirements.

EFFECTIVE DATE: June 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The existing export visa arrangement between the Governments of the United States and Sri Lanka is being amended further to provide for the use of visas for part and merged category designations for certain cotton and man-made fiber apparel products exported from Sri Lanka on or after June 1, 1988.

A copy of the current export visa arrangment is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice 52 FR 47745, dated December 11, 1987). Also see 44 FR 36221, published on June 21, 1979.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 1988

Commissioner of Customs,
Department of the Treasury,
Washington, DC

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 15, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established export visa requirements for certain cotton, wool and man-made fiber apparel products, produced or manufactured in Sri Lanka.

Effective on June 1, 1988 for goods exported on or after June 1, 1988, the existing export visa requirements established in the directive of June 15, 1979, as amended, are hereby further amended to include the following part and merged category designations:

PART CATEGORIES

Category	Description	TSUSA Number
338-S/339-S.	Knit shirts, other than T-shirts and tank tops.	Only TSUSA numbers 381.0240, 381.0425, 381.3516, 381.4020, 381.4130, 381.4337, 381.6610, 381.8506, 381.924, 384.0216, 384.0223, 384.0229, 384.0232, 384.2818, 384.2930, 384.2970, 384.3437 in Category 338-S; and only TSUSA numbers 384.0213, 384.0214, 384.0217, 384.0225, 384.0227, 384.0230, 384.0231, 384.0233, 384.0235, 384.0330, 384.0461, 384.2704, 384.2815, 384.2816, 384.2821, 384.2934, 384.2935, 384.2950, 384.2960, 384.2980, 384.3439, 384.3441, 384.3462, 384.5404, 384.7704 and 384.9517 in Category 339-S.
338-O/339-O.	Other	All remaining TSUSA numbers in Categories 338/339.
340-Y	Shirts made of two or more colors in the warp and/or the filling.	Only TSUSA numbers 381.0522, 381.5500, 381.5610, 381.5625, 381.5637 and 381.5660.
340-O	Other	All remaining TSUSA numbers in Category 340.

PART CATEGORIES—Continued

Category	Description	TSUSA Number
341-Y	Shirts and blouses made of two or more colors in the warp and/or the filling.	Only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4788.
341-O	Other	All remaining TSUSA numbers in Category 341.
359-C/659-C.	Coveralls and overalls.	Only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222 in Category 359-C; and only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310 in Category 659-C.
359-O	Other	All remaining TSUSA numbers in Categories 359.
369-D	Dishtowels	Only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.
369-S	Shoptowels	Only TSUSA number 366.2840.
369-O	Other	All remaining TSUSA numbers in Category 369.
659-O	Other	All remaining TSUSA numbers in Category 659.

Merged Categories

331/631
333/633
335/835
337/637
338/339
342/642/842
345/845
347/348/847
350/650
351/651
352/652
359-C/659-C
445/446
636/836
638/639/838
645/646
647/648

Accordingly, you are directed to prohibit effective for shipments of cotton and man-made fiber apparel products in the foregoing categories entered for consumption into the

Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after June 1, 1988 from Sri Lanka for which the Government of Sri Lanka has not issued an appropriate visa with the correct part and/or merged category designation. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (i.e., Categories 331/631 may be visaed as Categories 331/631 or if the shipment consists solely of Category 331 merchandise, the shipment may be visaed as Category 331, but not as Category 631).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-12378 Filed 6-1-88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before July 5, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 27, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision.
Title: Continuation Application for Grants under the Strengthening Historically Black Colleges and Universities Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 99.
Burden Hours: 1,485.
Recordkeeping:
Recordkeepers: 99.
Burden Hours: 297.
Abstract: This form will be used by institutions of higher education to apply for funding under the Strengthening Historically Black Colleges and Universities. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Grants under the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowships.
Frequency: Annually.
Affected Public: Businesses or other for-profit.
Reporting Burden:
Responses: 188.
Burden Hours: 3,760
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by institutions of higher education to apply for funding under the Patricia Roberts Harris Fellowships Program. The Department will use the information to make grant awards.

[FR Doc. 88-12441 Filed 6-1-88; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

San Francisco Operations Office; Financial Assistance Award; Grant; Special Energy Projects

AGENCY: U.S. Department of Energy (DOE); San Francisco Operations Office.

ACTION: Territorial Assistance Program Grant Award.

SUMMARY: DOE announces that it plans to conduct a competitive solicitation among the U.S. Territories and Compact Nation Governments inviting them to submit proposals for special energy projects. It is anticipated that the total amount of funding available for this program shall be $200,000. The Statutory Authority for use of a grant award is Pub. L. 95-91, DOE Organization Act, and Pub. L. 96-597.

Grant Number: DE-FG03-88SF17581.

The DOE will issue a competitive solicitation among the U.S. Territories and Compact Nation Governments. Applications will be submitted for projects to address priority needs and opportunities as identified in the 1982 Territorial Energy Assessment, prepared by DOE in response to a mandate in the Omnibus Territories Act, Pub. L. 96-957. The actual work to be accomplished will be determined by the projects to be selected for awards. All projects selected will be in the general categories of promoting the use of proven technologies that employ indigenous renewable resources or serve to reduce the costs and dependencies of the territories on imported fuels.

FOR FURTHER INFORMATION CONTACT: Sandra R. Silva, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, May 17, 1988.

James S. Hirahara,

Director, Contracts Management Division.

[FR Doc. 88-12396 Filed 6-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-122-007]

Colorado Interstate Gas Co.; Refund and Compliance Filing

May 27, 1988.

Take notice that on May 20, 1988, Colorado Interstate Gas Company (CIG) filed a refund report and compliance filing, and made refunds in Docket No. RP85-122. The filing and refunds were made to comply with Opinion No. 290 and Opinion No. 290-A, as well as the notice of extension of time issued December 10, 1987 in this docket. CIG states that its refund report and compliance filing is based on the cost of service derived from the Commission Opinion Nos. 290 and 290-A, and also reflects certain cost allocation and rate design changes required by those opinions.

CIG also states that the filing contains the derivation of non-gas rates under Opinion Nos. 290 and 290-A and the derivation and computation of refunds that were paid to CIG's jurisdictional customers contemporaneously with the filing of the refund report.

Copies of CIG's filing have been served on CIG's jurisdictional customers, interested state commissions, and all parties to the proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protects should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12429 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-176-000 and TQ88-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 27, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on May 20, 1988 certain revised and alternate revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective June 1, 1988.

ESNG states that it is making the tariff filing in compliance with § 154.310 of the Commission's Regulations, which contain the Transition Rules applicable to the Commission's new Purchased Gas Adjustment (PGA) regulations adopted in Order Nos. 483 and 483-A. The filing includes tariff sheets containing (1) a PGA clause pursuant to § 154.303 of the Regulations; (2) an initial current adjustment rate computed under § 154.310(b) of the Regulations; and (3) the existing surcharge rate pursuant to § 154.310(c) of the Regulations. ESNG also states that it is making this filing in the alternative because it does not know at this time what action the Commission will take on ESNG's pending PGA filing to be effective May 1, 1988 in Docket No. TA88-2-23-000.

ESNG state that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12433 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-6-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 27, 1988.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on May 16, 1988, tendered for filing Corrected Substitute Thirteenth Revised Sheet Nos. 57(i), Second Substitute Thirteenth Revised Sheet Nos. 57(i) and 57(ii), and Original-A Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1 to be effective May 1, 1988.

Corrected Substitute Thirteenth Revised Sheet No. 57(i) is being filed to replace Substitute Thirteenth Revised Sheet No. 57(i) which was filed on May 9, 1988. This tariff sheet contained a transposition of numbers related to the Commodity-Purchased Gas Cost for Rate Schedule CQ-3. This tariff sheet, while effective May 1, 1988, will be superseded by the revised pricing agreement stated below, which is also effective May 1, 1988.

Second Substitute Thirteenth Revised Sheet Nos. 57(i) and 57(ii) reflect changes, which are effective May 1, 1988, in the price of gas purchased by Great Lakes from TransCanada PipeLines Limited ("TransCanada") for resale to Northern Minnesota Utilities ("NMU"). Great Lakes states that the change in price is in accordance with revised gas pricing provisions that have been negotiated between NMU and TransCanada. The revised pricing provision will change the commodity charge from $1.50 to $1.30 per MMBtu for purchases up to 100% of daily contract quantity and from $1.463 to $1.30 per MMBtu for purchases in excess of 100% of daily contract quantity.

Original-A Sheet No. 57(v) reflects the current purchased gas cost adjustment to Rate Schedules T-19 and T-20 for the month of May, 1988. This change is made in conjunction with a related change in Rate Schedule T-4 effective May 1, 1988.

Great Lakes requests waiver of the 30 day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations and any other necessary waivers so as to permit Corrected Substitute Thirteenth Revised Sheet Nos. 57(i), Second Substitute Thirteenth Revised Sheet Nos. 57(i) and 57(ii) and Original-A Sheet No. 57(v) to become effective on May 1, 1988.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 88-12431 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP76-111-002 et al.]

Questar Pipeline Co.; Redesignation

May 27, 1988

On April 15, 1988, Questar Pipeline Company filed in Docket No. CP76-111-002, *et al.*, a request that it be designated as certificate holder, respondent, or party under its new name in lieu of its former name, Mountain Fuel Resources, Inc. In accordance with a corporate name change the jurisdictional natural gas operations are to be conducted under the name of Questar Pipeline Company.

A list of authorizations and pending proceedings is set forth in the appendix hereto, and the authorizations and proceedings are redesignated as requested, as well as the FERC Gas Tariff on file with the Commission.

This action is taken pursuant to 18 CFR 375.302(s) of the Commission's Regulations.

Lois D. Cashell,

Acting Secretary.

Questar Pipeline Company—Pending Proceedings and Existing Authorizations.

CP76-111
CP76-285
CP80-274
CP81-325-000
CP83-17-000
CP84-29-000
CP84-530-000
CP84-628-000
CP84-684-000
CP84-756-000
CP85-234-000
CP85-299-000
CP85-385-000
CP85-439-000
CP84-443-000
CP85-617-000
CP85-618-000
CP85-683-000
CP85-894-000
CP86-215-000
CP86-457-000
CP86-516-000
CP87-143-000
CP87-336-000
CP87-530-000
CP88-239-000
RP86-87-000
RP86-164-000
RP87-46-000
RP87-100-000
RP88-40-000
ST87-729-000
ST87-976-000
ST87-1033-000
ST87-1617-000
ST87-3208-000
ST88-176-000
ST88-213-000
ST88-226-000
ST88-1385-000
ST88-1386-000
ST88-1769-000
ST88-1869-000
ST88-2010-000
ST88-2011-000
ST88-2042-000
ST88-2043-000
ST88-2414-000
ST88-2730-000
ST88-2763-000
ST88-2883-000

[FR Doc. 88-12434 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-80-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff May 27, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 20, 1988 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, the proposed effective date of which is April 1, 1988:

Second Substitute First Revised Sheet No. 52
Second Substitute First Revised Sheet No. 53
Second Substitute First Revised Sheet No. 54
Second Substitute First Revised Sheet No. 55
Second Substitute First Revised Sheet No. 482

Texas Eastern states that the above listed tariff sheets are being filed in compliance with the Commission's order dated April 21, 1988 in Docket No. RP88-80-000 and to track the modifications approved by the Commission on May 16, 1988 in Docket No. RP88-27. Workpapers underlying the allocation factors used in the filing are included as Attachment A. Texas Eastern also filed alternate tariff sheets in the event the Commission elects not to accept the tariff sheets listed above.[1]

[1] Texas Eastern states that the alternate tariff sheets reflect the elimination of all interruptible sales volumes in the determination of the base and deficiency period volumes for all customers. Workpapers for the alternate tariff sheets setting forth Texas Eastern's determination of the allocation factor for the principal amount (which includes a predetermined carrying charge) and a breakdown of the total and monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are included in Attachment B of the filing.

Texas Eastern states that although the Commission's order was not issued until May 16, 1988, United billed its customers on May 10, 1988 for the months January through April and that Texas Eastern's payment is due on May 20, 1988. Contemporaneously with the filing of these tariff sheets, Texas Eastern is billing, pursuant to the existing effective Section 31 provisions of its tariff, to recover from Texas Eastern's customers the amount payable by Texas Eastern to United. To the extent that the amounts billed by Texas Eastern in its May 20, 1988 billing may differ from the amount which would have been billed if the tariff sheets proposed herein were effective, Texas Eastern will credit any such overpayment and debit any such underpayment with interest on future bills upon approval of the tariff sheets proposed herein.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties of record in Docket No. RP88-80.

Any person desiring to be heard or to protest said filing should file on motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-12432 Filed 6-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-175-000]

Texas Eastern Transmission Corp.; Petition for Declaratory Order

May 27, 1988.

Take notice that on May 17, 1988, Texas Eastern Transmission Corporation (Texas Eastern) filed a petition for declaratory order to determine whether requests for transportation similar to that submitted by Tejas Power Corporation (Tejas) do or do not qualify for implementation

pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Texas Eastern states that Tejas in its May 2, 1988 motion for emergency clarification of the order issued on April 22, 1988 in Docket No. RP88–81–000, failed to enlighten the Commission on the specific details of the transportation desired by Tejas which Texas Eastern determined did not qualify for implementation under section 311 of the NGPA. Texas Eastern states that the Tejas transportation request sets forth a transaction structure which, Texas Eastern submits, has not been directly addressed by the Commission in prior cases.

Texas Eastern states that the Commission has previously determined that a single person or corporate entity can qualify as both an interstate and intrastate pipeline for purposes of self-implementing transportation. Similarily Texas Eastern submits that an entity which is qualified as an intrastate pipeline in one state (*e.g.*, Texas) may not necessarily be acting in that intrastate pipeline capacity when it conducts business in another state (*e.g.*, Louisiana). Texas Eastern states that in the factual circumstances of the Tejas transaction, the intrastate pipeline entity is not acting in its capacity as an owner of an intrastate pipeline.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 6, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–12430 Filed 6–1–88; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3389–8]

Georgia, Mississippi, South Carolina, and Tennessee; FY 88 Grant Performance Reports

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed midyear evaluations of three state air pollution control programs (Georgia Environmental Protection Division, Mississippi Bureau of Pollution Control and South Carolina Department of Health and Environmental Control), and of one local program in Tennessee (Knox County Department of Air Pollution Control). These midyear audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. The audits were also conducted as part of the National Air Audit System (NAAS) established by EPA in an effort to assure nationwide consistency in the evaluation of state and local air pollution programs. EPA Region IV has prepared reports for the four agencies identified above and these NAAS/§105 reports are now available for public inspection.

ADDRESS: The reports may be examined at the EPA's Region IV office, 345 Courtland Street NE., Atlanta, GA 30365, in the Air, Pesticides & Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Walter Bishop at 404/347–2864 (FTS: 257–2864).

Dated: May 23, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88–12368 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3390–2]

Integrated Risk Information System (IRIS); Health Risk Assessment; Guidelines, etc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; availability of the Integrated Risk Information System (IRIS).

SUMMARY: The Integrated Risk Information System (IRIS) is an electronic on-line database of the U.S. Environmental Protection Agency (EPA) that provides risk assessment and regulatory information on chemical substances. This notice describes IRIS and provides information on how to access this health risk information database.

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: IRIS User Support, USEPA, Office of Research and Development, Environmental Criteria and Assessment Office, MS–114, Cincinnati, OH 45268, Telephone (513) 569–7254 or FTS 684–7254.

SUPPLEMENTARY INFORMATION:

Description

IRIS is a primary source of EPA health hazard assessment and related information on chemicals of environmental concern. It is intended to serve as a guide for the hazard and dose-response assessment steps of EPA assessments. IRIS was created in response to requests for Agency risk information; its purpose is to provide a vehicle for the communication of chemical-specific information necessary to develop EPA risk assessments. IRIS is intended to make chemical-specific risk information readily available to those who must perform risk assessments and also to increase consistency in risk management decisions. EPA staff and EPA contractors are expected to use the risk information for those chemicals in the IRIS database. The information contained in IRIS is intended for users without extensive training in toxicology, but with some knowledge of health science. Therefore, IRIS is not an exhaustive toxicological database, nor a risk assessment methodology resource. IRIS presents only summaries of hazard and dose-response assessments, but provides reference citations and EPA contacts for further information.

The IRIS database includes the following sections (Service Codes); these Service Codes are menu options:

(1) Chemical files which sumarize data on each chemical

(2) Alphabetical and CAS number listings of chemicals in IRIS

(3) List of revisions made to existing chemical files

(4) Introductory overview of IRIS and IRIS User's Guide

(5) Background documents on methodologies

(6) Instructional case study and sample chemical files

(7) Glossary of terms and acronyms used in IRIS

(8) Status of chemicals scheduled for the IRIS review process.

Each of the chemical files contains a chronic health hazard assessment for noncarcinogenic effects and/or for

carcinogenic effects as relevant. Information on less-than-lifetime health hazard assessments, established in Drinking Water Health Advisories, is included in the chemical files. The chemical files also provide summaries of EPA regulatory decisions, such as Water Quality Criteria, Clean Air Act regulations, Pesticide Registration Standards, and Reportable Quantities developed for Superfund. Supplementary information, such as acute toxicity summaries and physical-chemical properties data, are included when available. Apart from the chemical files, background documents in the database describe the basic concepts and limitations of IRIS, as well as the risk assessment procedures and assumptions used in developing the IRIS health hazard database assessment information.

The health assessment information contained in IRIS, except as specifically noted, has been reviewed and agreed upon by inter-disciplinary review groups of EPA scientists. These scientists have extensive experience in risk assessment. Thus, the information in IRIS represents and expert Agency consensus. This Agency-wide agreement on risk information is one of the most valuable aspects of IRIS.

As the inter-disciplinary review groups of EPA scientists continue to review and verify risk assessment information, additional chemical files will be added to IRIS. If you wish to obtain information on the status of this review for a particular chemical, call IRIS User Support at (513) 569–7254 or FTS 684–7254.

Accessing IRIS

IRIS is available electronically from the following three sources:

(1) DIALCOM Inc. IRIS is on DIALCOM Inc.'s Electronic Mail, the computer-based electronic communication system to which EPA subscribes. To obtain a DIALCOM Inc. account, contact Mike McLaughlin, (202) 488–0550, or write to: DIALCOM Inc., 600 Maryland Avenue SW., Suite 307, Washington DC 20024.

(2) Public Health Network (PHN). PHN is the communication network of the Public Health Foundation. The Foundation serves member state health departments and will provide IRIS on PHN to state and local health departments. Contact Paul Johnson, (202) 898–5600.

(3) National Technical Information Service (NTIS). Although IRIS accounts will not be available through NTIS, a floppy disk version of IRIS will be provided by NTIS for a fee. Write to: Stu Wiseman, NTIS, 5285 Port Royal Road, R32, Springfield, VA 22161, or call (703) 487–4807.

There are two hardware-software options accessing IRIS. Both options use common hardware and software. The first option requires a personal computer (PC), as standard 1200 baud Bell 212A compatible or 2400 baud asynchronous modem, a phone line, and PC communication software as CROSSTALK XVI. Many other communication software packages may also be used. To determine if your communication software is compatible, contact Mike McLaughlin at (202) 488–0550. The second option requires an ASCII communicating dumb computer terminal, a standard 1200 baud Bell 212A compatible or 2400 baud asynchronous modem, and a phone line. The necessary communication settings are: parity—NO; 8 bits, 1 stop bit; full duplex.

At this time, IRIS chemical files are only available electronically. Users are strongly encouraged to view or print on-line information to ensure use of the most up-to-date chemical information.

Cost

The user must pay only for the cost of accessing IRIS. The user will be billed by DIALCOM, Inc. there is a $25.00 monthly minimum which is applied against a usage fee of $25.00 per hour. In addition to the usage fee, there is a $.05 charge per computer screen accessed. There is no EPA charge for using IRIS.

Those choosing to access IRIS via the Public Health Network will be charged under a different set of fees. Contact the Public Health Foundation at (202) 898–5600 for information.

Limitations of IRIS Information

The information in IRIS is most useful if applied in the larger context of risk assessment as outlined by the National Academy of Sciences [National Research Council, 1983]. IRIS supports the first two steps of the risk assessment process (as summarized in Service Code 4); namely, the hazard identification and dose-response assessment steps. The primary qualitative and quantitative risk data on IRIS, the reference dose and carcinogenicity assessments, can serve as guides in evaluating potential health hazards and selecting a reponse to alleviate a potential risk to human health.

The REFERENCE DOSE (RfD) can be used to estimate a level of environmental exposure at or below which no adverse effect is expected to occur. The RfD is an ESTIMATE (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. The RfDs are based on an assumption of lifetime exposure and may not be appropriately applied to less-than-lifetime exposure situations. RfDs are derived for the noncarcinogenic effects of substances that may also be carginogencic.

The CARCINOGENICITY ASSESSMENTS on IRIS begin with a qualitative weight-of-evidence judgment in the form of a classification as to the likelihood that an agent may be a carcinogen for humans. This judgment is made independent of consideration of the agent's potency. A quantitative assessment, including slope factor and unit risks, is then presented. The slope factor is an upper-bound ESTIMATE of the cancer risk for humans per mg of agent/kg body weight/day. The unit risk, which is calculated from the slope factor, is an ESTIMATE in terms of either risk per μg/L of drinking water, or risk per μg/cu.m of air concentration.

In general, risk values, such as those on IRIS, cannot be used to predict the acutal incidence of human disease or the type of effects chemical exposures may have on humans. This is due to the numerous UNCERTAINTIES involved in risk assessment, including those associated with extrapolations from animal data to humans and from high experimental doses to lower environmental exposures. The organs affected and the types of adverse effects resulting from chemical exposure may differ between study animals and humans. In addition, many factors besides exposure to a chemical influence the occurrence and extent of human disease.

Each RfD and carcinogen assessment is derived by using consistent chemical hazard identification and dose-response assessment methods. These methods are outlined in Background Documents 1 and 2, found in Service Code 5. The application of altered IRIS RfD or carcinogen assessment values (for example, the use of more or fewer Uncertainty Factors than were applied to arrive at an RfD) in estimating the potential health risk posed by a chemical exposure is not endorsed by

the inter-disciplinary review groups of EPA scientists. The risk information in IRIS will be REVISED by these work groups when additional health effects data become available and new developments in risk assessment methods arise.

Information Submission

The IRIS Information Submission Desk (address provided at the end of this notice) will receive all information submissions regarding IRIS. To facilitate the handling of this information, all submissions must adhere to the following format. All submissions must include a cover letter and issue page, as well as any supporting documents.

The cover letter should:

- State that the correspondence is an IRIS information submission. If the issue raised in an information submission is not chemical-specific, this should be clearly stated:
- Describe in general terms the purpose of the information submission for each issue abut IRIS being addressed (if more than one issue is being raised, each should be described); and
- Include the name, address and phone number of the individual sending the information submission.

The issue page should:

- Identify the chemical by name and CAS number;
- State the type of IRIS information (for example, oral reference dose, inhalation carcinogenicity assessment, etc.) that is being addressed;
- State, in appropriate detail, the issue being addressed;
- Describe briefly the information and/or supporting documents being provided;
- Explain how and why the information submission could change what is in IRIS; and
- State any claims for confidential treatment of part or all of the submission, with appropriate justification for such claims.

If more than one chemical or type of IRIS information is being addressed, prepare a separate issue page for each chemical.

Notes regarding supporting documents:

- Parties submitting health effects studies for existing chemicals on IRIS should include, for each study submitted, a specific explanation of how and why the study results could change a quantitative risk value or relevant IRIS narrative.
- Parties submitting health effects studies for those chemicals scheduled for consideration by the inter-disciplinary review groups of EPA scientists should include, for each study submitted, an explanation of the significance of the study results to a potential RfD, carcinogen assessment value, etc.
- Two copies of all documents referenced should be included in the submission.
- Documents (or sections thereof) claimed to be confidential should be so marked. Any documents not marked may be made available to the public without further notice to the submitter. Any claim to confidentiality should be explained on the relevant issue page.

Because IRIS is designed to be a publicly available database, any submitted studies or documents considered by EPA and used to revise any part of IRIS will be summarized and cited in IRIS. This information may be made available to an external peer review panel and to the public upon request.

- Any material that cannot be made available to a peer review panel or to the public upon request may receive limited consideration.

Comments on Drinking Water Health Advisories will not be considered by the IRIS Information Submission Desk unless they identify an inconsistency between the Health Advisory summarized in IRIS and the actual USEPA Office of Drinking Water Health Advisory. Questions about the substance of Drinking Water Health Advisories should be addressed to the Safe Drinking Water Hotline, 1–800–426–4791. Although EPA regulations are summarized in IRIS, comments on the content of regulations will not be considered by the IRIS Information Submission Desk, but should be addressed to the EPA program office with the statutory responsibility for the regulatory action.

Questions about IRIS should be made to IRIS User Support, (513) 569–7254 or FTS 684–7254, and not the IRIS Information Submission Desk.

Information submissions should be sent to: IRIS Information Submission Desk, USEPA, Environmental Criteria and Assessment Office, MS–114, 26 Martin Luther King Drive, Cincinnati, OH 45268.

Date: May 25, 1988.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88–12370 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3389–6]

Science Advisory Board; Radiation Advisory Committee, Dose and Risk Subcommittee, and Sources and Transport Subcommittee; Three Open Meetings

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of meetings of the Science Advisory Board's Radiation Advisory Committee and two of its Subcommittees. The Dose and Risk Subcommittee will meet June 20, 1988. The Radiation Advisory Committee will meet June 27–28, 1988. The Sources and Transport Subcommittee will meet July 13–15, 1988. All three meetings will be held at the U.S. Environmental Protection Agency in the Administrator's Conference Room 1103 West Tower. The meetings will begin at 9:00 a.m. on the first day and adjourn no later than 5:30 p.m. of the last day.

On June 20, 1988 the Dose and Risk Subcommittee will review risk estimates for radiation developed by the Agency. The estimates are for different types of radiation and are presented in terms of ranges of risk. The Agency is considering using the new estimates for a variety of applications including the regulation of radionuclides as a hazardous air pollutant and possible regulations for the disposal of low-level radioactive waste. The risk estimates are set forth in "ORP Low-LET Risk Estimate for Regulatory Purposes", February 25, 1988 and "EPA Radon Risk Estimates" expected shortly. Both documents are available from Dr. Jerome Puskin at the Office of Radiation Programs (ANR–461), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202/475–9640).

The Radiation Advisory Committee meeting June 27–28, 1988 will have four purposes: To hear the report of the Dose and Risk Subcommittee, to hear the report of the Randon Measurement Subcommittee, to discuss issues relevant to the Sources and Transport Subcommittee review, and to be briefed on other radiation-related activities of the Environmental Protection Agency.

On July 13–15, 1988 the Sources and Transport Subcommittee meeting will review those portions of the technical basis for the revised radionuclides NESHAP (national emissions standard for hazardous air pollutants) which relate to relevant source of radiation and its transport through the environment. Most of this technical basis is set forth in *Radionuclides: Background Information Document for*

Final Rules, EPA 520/1–84–022–1, October 1984; the remainder will be presented in memoranda from the Office of Radiation Programs. These materials can be obtained from Mr. Terrence McLaughlin at the Office of Radiation Programs (ANR–460), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–9610.

The meetings are open to the public. Any member of the public wishing to attend, present information, or receive further details should contact Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A–101F), Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC Telephone 202/382–2552 or FTS 8–382–2552. Written comments will be accepted and can be sent to Mrs. Conway at the address above by 12:00 Noon each Friday before the meetings.

Date: May 24, 1988.

Donald G. Barnes,

Acting Director, Science Advisory Board.

[FR Doc. 88–12369 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3389–7]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Cannons Engineering Corp. et al.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

DATE: Comments must be provided on or before July 5, 1988.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In Re the Cannons Engineering Corporation Sites in Bridgewater, Massachusetts and Plymouth, Massachusetts, the Gilson Road Site in Nashua, New Hampshire, and the Tinkham's Garage Site in Londonderry, New Hampshire, U.S. EPA Docket No. 1–88–1034 (March 10, 1988).

FOR FURTHER INFORMATION CONTACT: Audrey Zucker, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC–2203, J.F.K. Building, Room 2203, Boston, Massachusetts 02203, (617) 565–3441.

Notice of De Minimis Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Reponse, Compensation and Liability Act of 1986, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Cannons Engineering Corporation hazardous waste sites in Bridgewater and Plymouth, Massachusetts, the Tinkham's Garage hazardous waste site in Londonderry, New Hampshire, and the Gilson Road hazardous waste site in Nashua, New Hampshire. The terms of this proposed agreement are identical to the terms contained in the first proposed agreement concerning these sites which was published for comment on February 11, 1988, 53 FR 4070. The settling parties to this second proposed agreement were unable to participate in the first settlement for administrative reasons. This second settlement agreement has been proposed for approval by the Regional Administrator for EPA Region I on May 23, 1988. Below are listed the parties who have executed Binding Letters of Intent committing to participate in this settlement:

Abington Junior High School; Ark-Less Switch Corp.; Benjamin Moore; Coppercraft Guild; Davol Inc.; Foster Metals; Manchester Union Leader; Ocean State Finishing Corp.; Orleans Elementary School; PFW; Richardson Company; St. John The Baptist Rectory; St. Patrick's School; Stearns Express Co.; Taunton Savings Bank; Tremont Nail Co.; U.S. Post Office Group; U.S. Dept. of Commerce; U.S. Air Force Group; U.S. Coast Guard Group; Vulplex, Inc.

These 21 parties will pay an estimated $541,466.94 in settlement payments under the agreement.

EPA is entering into the agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with parties in the Cannons case who are responsible for less than one percent of the waste volume at each of the four sites with which they are associated.

Settling Parties will be required to pay their volumetric shares of the governments' response costs at the four sites, including costs incurred by the government to date and the costs expected to be incurred at the sites in the future.

Settling Parties will also be required to pay a settlement premium in addition to their respective volumetric shares of the expected response costs at each site to compensate for the risks that are posed by settling before all costs are known. The amount of each Settling Party's premium payment is calculated by multiplying .60 times the Party's volumetric share of the total response costs at the four sites.

Finally, Settling Parties will be required to pay a base settlement charge to reimburse the government for transaction costs incurred in conducting the settlement negotiations leading up to this proposal.

In exchange for these settlement payments, the governments covenant not to sue for further civil or administrative liabilities in connection with the four Cannons sites. The covenant also extends to all federal and state natural resource damage liabilities with the exception that Settling Parties may be called upon to fund assessments of damages to natural resources under the trusteeship of the National Oceanic and Atmospheric Administration (NOAA) at the Bridgewater, Plymouth and Nashua sites if data gathered by June 30, 1990 does not eliminate the need for damage assessements.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Boston, Massachusetts 02203. Additional backgound information relating to the settlement is available for review at the EPA's Region I Office of the Regional Counsel.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88–12371 Filed 6–1–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

May 20, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0085

Title: Employment Inquiry

Form No.: FCC 65

A revised and reinstated employment inquiry form has been approved for use

through 4/30/91. It will be implemented when copies of the form are available.

OMB No.: 3060–0407

Title: Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit

Form No.: FCC 307 (Data formerly submitted on FCC 701)

A new application form FCC 307 has been approved for use through 3/31/91. This form will be used by broadcast applicants only. The existing form FCC 701 (April 1985 edition) will remain in use until this new form is available. At that time, a Public Notice will be issued containing information on availability and implementation for broadcast applicants.

OMB No.: 3060–0035

Title: Application for Renewal of Auxiliary Broadcast License (Short form)

Form No.: FCC 313–R

A revised application form FCC 313–R has been approved for use through 3/31/91. The April 1986 edition with a previous expiration date of 3/31/88 will remain in use until revised forms are available.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–12387 Filed 6–1–88; 8:45 am]

BILLING CODE 6712–01–M

[Report No. CL–88–111]

Common Carrier Public Mobile Services Information; Dates and Filing Requirements Announced for Acceptance of Applications for Block 2 Cellular RSAs

May 20, 1988.

During the months of July and August, 1988 applications for block 2 cellular RSAs will be accepted for filing. Specific filing dates and markets appear on pages 5 and 6 of this notice.

All applications for these markets must be filed in Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Cellular Telephone—Market No. (Enter market number), P.O. Box 371995M, Pittsburgh, PA 15250–7995.

Applications shipped via common carrier or hand carried must be brought to the following address between the hours of 8:30 a.m. and 5:00 p.m.: Federal Communications Commission, Cellular Telephone Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Directions to the Strip Commerce Center filing location appear on page 4 of this notice.

Format of Applications

Applications must consist of: (1) A completed transmittal sheet, a copy of which is attached hereto (see also page 4); (2) a $200 fee; and (3) a sealed 5″×7″ envelope containing two microfiche copies of the application.

The two microfiche copies of each application shall be prepared in accordance with § 22.913(c) of the Commission's rules.

- Each fiche must be labeled at the top with the Applicant's Name, Market Number, Market Name, and Frequency Block. For Example: Jones, Robert Market #336. California 1—Del Norte Frequency Block A
- One microfiche jacket must be labled "Original" and the other jacket must be labeled "Copy".
- The fiche must be black & white (the purple or blue fiches are unacceptable as they do not produce readable paper copies), and the "original" microfiche copy must be archival quality.
- The information required by § 22.913(b)(2) must be placed on the 5″×7″ microfiche envelope. The 5″×7″ microfiche envelope, therefore, must be clearly labeled with the Applicant's Name, Market Number, Market Name, and Frequency Block.
- the information on the microfiche envelope must match the information on the transmittal sheet.
- The completed transmittal sheet, the $200 fee and the microfiche envelope must be placed in a 9″×12″ envelope. The market number of the market being applied for must be placed in the lower left hand corner of all envelopes delivered to the Strip Commerce Center facility.

The certification required under § 22.913(b)(3) is included on the transmittal sheet and will no longer be the first page in the application itself. The applicant chosen in each market will be required to submit its original application and two copies thereof within seven (7) days of the public notice announcing the winning applicant in each market.

Receipt Copies

Applicants wishing stamped receipts must provide an additional copy of the transmittal sheet for each application submitted.

- Such applications that are mailed or shipped via common carrier must contain a self-addressed business-sized (approximately 4.5″×9.5″) stamped envelope along with the extra copy of the transmittal sheet. Both the extra copy and the envelope must be attached to the application inside the 9″×12″ outere envelope.
- Applications that are hand delivered must not include the receipt copy of the transmittal sheet inside the outer envelope. The receipt copy shall be presented to the acceptance clerk with the 9″×12″ envelope containing the application and will be stamped at that time.

Points to Remember

1. Each application, with associated material (transmittal sheet, check or money order, and 5″×7″ microfiche envelope) must be separately packaged in a 9″×12″ outer envelope.
2. A separate $200 fee must be submitted with each application.
3. A separate completed transmittal sheet is required with each application.
4. The label on the microfiche envelope must agree with the information on the transmittal sheet and the information on the top of each fiche.
5. The transmittal sheet must be signed in ink (preferably not black ink).
6. No extraneous material (such as transmittal letters) should be submitted; it will only serve to impede the processing of the application.
7. The market name and market number must watch.
8. A single check of money order in the amount of $200 (made payable to the Federal Communications Commission) must be included. Cash is strongly discouraged.
9. For applications sent via the U.S. Postal Service, the market number of the market being applied for must appear at the end of the second line in the address.
10. For applications delivered by any means other than the U.S. Postal Service, the market number must appear in the lower left hand corner of the 9″×12″ outer envelope.
11. The 9″×12″ outer envelope may be placed inside a shipping envelope when applications are shipped by couriers which use special shipping envelopes.
12. Do not submit FAA Form 7640–1 to the Federal Aviation Administration at the time of filing this application. *See Public Notice* (Report No. CL–88–33, Mimeo No. 726, released November 27, 1987).
13. The application must include a firm financial commitment, as required by § 22.917 of the Commission's Rules.

DIRECTIONS TO STRIP COMMERCE CENTER

From Greater Pittsburgh International Airport and Interstate 79

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.

Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.

Take Liberty Avenue to 28th Street (28 blocks).

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

From Pennsylvania Turnpike

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).

Proceed on Grant Street to Liberty Avenue (Approximately 6–7 blocks).

Bear right on to Liberty Avenue.

Take Liberty Avenue to 28th Street.

Turn right on 28th Street and follow FCC signs to parking lot.

Enter building at designated area and follow signs.

Transmittal Sheet

Attached is a copy of the transmittal sheet which must be filed with each cellular application. You may make copies of the attached form for your use. Only a limited number of transmittal sheets will be available to the public through the forms room located at 1919 M Street, NW. in room B–10.

Notice

A copy of this Public Notice (excluding the transmittal sheet) will be placed in the **Federal Register.**

ACCEPTANCE OF APPLICATIONS FOR CELLULAR RSAs IN BLOCK 2

July 13–15, 1988

Alaska

315. Alaska 1—Wade Hampton
316. Alaska 2—Bethel
317. Alaska 3—Haines

Hawaii

385. Hawaii 1—Kauai
386. Hawaii 2—Maui
387. Hawaii 3—Hawaii

July 20–22, 1988

California

336. California 1—Del Norte
337. California 2—Modoc
338. California 3—Alpine
339. California 4—Madera
340. California 5—San Luis Obispo
341. California 6—Mono
342. California 7—Imperial
343. California 8—Tehama
344. California 9—Mendocino
345. California 10—Sierra
346. California 11—El Dorado
347. California 12—Kings

July 27–29, 1988

Arizona

318. Arizona 1—Mohave
319. Arizona 2—Coconino
320. Arizona 3—Navajo
321. Arizona 4—Yuma
322. Arizona 5—Gila
323. Arizona 6—Graham

Washington

693. Washington 1—Clallam
694. Washington 2—Okanogan
695. Washington 3—Ferry
696. Washington 4—Grays Harbor
697. Washington 5—Kittitas
698. Washington 6—Pacific
699. Washington 7—Skamania
700. Washington 8—Whitman

August 3–5, 1988

Nevada

543. Nevada 1—Humboldt
544. Nevada 2—Lander
545. Nevada 3—Storey
546. Nevada 4—Mineral
547. Nevada 5—White Pine

Utah

673. Utah 1—Box Elder
674. Utah 2—Morgan
675. Utah 3—Juab
676. Utah 4—Beaver
677. Utah 5—Carbon
678. Utah 6—Piute

Wyoming

718. Wyoming 1—Park
719. Wyoming 2—Sheridan
720. Wyoming 3—Lincoln
721. Wyoming 4—Niobrara
722. Wyoming 5—Converse

August 10–12, 1988

Oregon

606. Oregon 1—Clatsop
607. Oregon 2—Hood River
608. Oregon 3—Umatilla
609. Oregon 4—Lincoln
610. Oregon 5—Coos
611. Oregon 6—Crook

Idaho

388. Idaho 1—Boundary
389. Idaho 2—Idaho
390. Idaho 3—Lemhi
391. Idaho 4—Elmore
392. Idaho 5—Butte
393. Idaho 6—Clark

New Mexico

553. New Mexico 1—San Juan
554. New Mexico 2—Colfax
555. New Mexico 3—Catron
556. New Mexico 4—Santa Fe
557. New Mexico 5—Grant
558. New Mexico 6—Lincoln

August 17–19, 1988

Colorado

348. Colorado 1—Moffat
349. Colorado 2—Logan
350. Colorado 3—Garfield
351. Colorado 4—Park
352. Colorado 5—Elbert
353. Colorado 6—San Miguel
354. Colorado 7—Saguache
355. Colorado 8—Kiowa
356. Colorado 9—Costilla

Montana

523. Montana 1—Lincoln
524. Montana 2—Toole
525. Montana 3—Phillips
526. Montana 4—Daniels
527. Montana 5—Mineral
528. Montana 6—Deer Lodge
529. Montana 7—Fergus
530. Montana 8—Beaverhead
531. Montana 9—Carbon
532. Montana 10—Prairie

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

BILLING CODE 6712-01-M

"FOR FCC USE ONLY"

BATCH #	CLASSIFICATION	FEE CONTROL #
☐ #1 (001-699)	☐ 1. Untimely	
☐ #2 (700-799)	☐ 2. Fee Error	
☐ #3 (800-899)	☐ 3. Transmittal illegible/missing	
☐ #4 (900-999)	☐ 4. Incomplete transmittal	
_____	☐ 5. Fiche Envelope(s) missing	
	☐ 6. Fiche Envelope(s) wrong label	
	☐ 7. Fiche Envelope name ≠ Transmittal name	
	☐ 8. Market name and # mismatch	
	☐ 9. No signature	RECEIPT DATE

TRANSMITTAL SHEET FOR CELLULAR APPLICATIONS

(Instructions On Reverse Side Must Be Followed)

• 1 ___ ___ ___ (MARKET #) • 2 ☐ A - nonwireline ☐ B - wireline

3 MARKET NAME _____

• 4 APPLICANT'S NAME If person, list last name first _____

• 5 MAILING STREET ADDRESS or P.O. BOX LINE 1 _____

• (6) APPLICANT'S ADDRESS LINE 2 _____

• 7 CITY _____ • 8 ___ ___ (STATE) • 9 ___ ___ ___ ___-___ ___ ___ ___ (ZIP CODE)

• (10) (___ ___ ___) - ___ ___ ___ - ___ ___ ___ ___
(AREA CODE) (PREFIX) (NUMBER)

CERTIFICATION

11 I hereby certify, under penalties of perjury, that this application for an initial cellular authorization is complete in every respect and contains all of the information required by FCC Form 401 and the Commission's cellular application rules. I acknowledge that if, upon Commission inspection, this certification is shown to be incorrect, this application shall be dismissed without further consideration.

I also certify that the applicant is the real party in interest in this application and there are no agreements or understandings, other than those specified in this application, which provide that someone other than the applicant shall have an indirect or direct ownership interest. It is also certified that the applicant intends to construct and operate the station as proposed and that there are no agreements or understandings that are inconsistent with that intent.

I declare, under penalties of perjury, that I am the authorized representative of the above-named applicant in the above entitled matter; that I have read the foregoing certification; and that the matter and things therein stated are true and correct.

Executed on _____ [date].

_____ Signature

_____ TYPE/PRINT NAME

_____ TYPE/PRINT TITLE

Any Correspondence Regarding This Application Should Be Directed To:

☐ **Same as Line 4 above**

(12) CONTACT REPRESENTATIVE'S NAME, if applicable _____

CONTACT REPRESENTATIVE'S MAILING STREET ADDRESS or P.O. BOX LINE 1 _____

CONTACT REPRESENTATIVE'S ADDRESS LINE 2 _____

CITY _____ STATE _____ ZIP CODE _____

— THIS TRANSMITTAL SHEET MAY BE REPRODUCED —

INSTRUCTIONS FOR COMPLETING TRANSMITTAL SHEET FOR CELLULAR APPLICATIONS

1. Provide three digit code for market number.

2. Check box "A" for non-wireline; "B" for wireline.

3. Type/Print market name, allowing space between words, if market name contains more than one word. **Do not abbreviate.**

4. Type/Print applicant name, using the name of the applicant as it appears on Form 401, Schedule A.

5. Type/Print address of applicant, using street address as it appears on Form 401, Schedule A.

6. This line can be used for further identification, or if additional space is needed.

7. Type/Print city.

8. Type/Print state code in two spaces, as prescribed by the Post Office.

9. Type/Print zip code using appropriate five or nine-digit code, as prescribed by the Post Office.

10. Provide telephone number of applicant (Item 4), including area code, prefix, and telephone number. This telephone number will be used in producing the Lottery Notice only.

11. CERTIFICATION:

Individual Applicants: If the application is for an individual, he/she should sign the individual name and, for the area marked "title", enter "applicant" or "owner".

Group or Partnership: If the application is composed of two or more individuals, or is a partnership, the signature of any one individual or partner is acceptable. For groups of individuals, the title of "co-applicant" or "co-owner" should be entered. For partnerships, the title "partner", "general partner" or "limited partner" (as applicable) should be entered.

Corporations: If the applicant is a corporation, the signature of an officer or duly authorized employee of that corporation is acceptable. The signator should enter an appropriate title in the space provided.

12. Check box if no contact representative is being used. If contact representative is being used, type/print Item 12 completely (name, address, city, state, zip code).

— THIS TRANSMITTAL SHEET MAY BE REPRODUCED —

[FR Doc. 88-12386 Filed 6-1-88; 8:45 am]
BILLING CODE 6712-01-C

[General Docket No. 86-337]

Oral Proceeding in the Matter of an Automatic Transmitter Identification System (ATIS) for Video Satellite Uplinks

On May 16, 1988, pursuant to an April 16, 1988 Public Notice, an Oral Proceeding was held in the above docket as an adjunct to the Further Notice of Proposed Rulemaking in that docket adopted on June 10, 1987. Interested parties presented views and information on issues related to ATIS that were specified in the April 6, 1988 Public Notice

The entire Oral Proceeding was recorded on video tape. That recording has been associated with Docket 86-337. Copies of the video tape may be ordered and purchased from the Commission's contractor, PRISM, at (202) 686-8250.

Thirty additional days are now being provided for the filing of written comments concerning any of the issues and matters discussed in the Oral Proceeding. Any such written comments should be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554 and be filed prior to June 30, 1988.

A copy of this notice is being mailed to all parties of record in this proceeding.

For further information please contact Barbara Jones, at (202) 632-7090.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12383 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

A Closed Circuit Test of the Emergency Broadcast System During the Week of June 20, 1988

May 27, 1988.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of June 20, 1988. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88-12384 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-41]

Window Notice for the Filing of FM Broadcast Applications

Release: May 23, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning May 23, 1988 and ending June 20, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—227 A

El Dorado, AR
Chowchilla, CA
Marianna, FL
Fairfield, ME
Cassville, MO
Avon, NY
New Paltz, NY
Meyersdale, PA
White Sulphur Spring, WV

Channel—262 A

Orange Cove, CA
Sibley, IA
LaRose, LA
Southwest City, MO
Delhi, NY
Elloree, SC
Pawley's Island, SC
Petersburg, VA

Channel—228 A

Hawthorne, NV
Barnesville, OH

Channel—262 B1

Champaign, IL

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-12381 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-40]

Window Notice for the Filing of FM Broadcast Applications

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning May 12, 1988 and ending June 16, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—276 A

Window Rock, AZ
Firebaugh, CA

Channel—235 A

Millen, GA
Reserve, LA
Benton Harbor, MI
Wurtsmith, MI
Stewartville, MN [1]
Holly Springs, MS
Ada, OH
Oliver, PA
Port Allegany, PA

Channel—235 C2

Columbus, MS

Channel—269 A

Sierra Vista, AZ [2]

Edna, TX

Channel—284 A

Hardy, AR
Texarkana, AR
Bushnell, IL
Nashville, IL
Washington, LA
Chaffee, MO
Rose Hill, NC

Channel—284 C2

Greenville, MS
Roswell, NM

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-12382 Filed 6-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1730]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 25, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are

[1] A proposal in MM Docket 87-306 request substitution of Channel 239C2 for this allotment. If the proposal is adopted applicants will be required to amend their applications to specify the higher class channel, and will be afforded cut-off protection against any applications not filed during this window.

[2] Due to Commission error in the allotment of this channel, we are imposing a modification of site restriction 1.5KM (1 Mile) north of the city. The restricted site coordinates are 31-34-08 and 110-17-42.

available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed on or before June 17, 1988. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 90, Subparts M and S of the Commission's Rules. (PR Docket No. 86–404) Number of petitions received: 2.

Subject: Amendment of the Rules Regarding Control and Security Alarm Devices Under Part 15. (Gen Docket No. 86–422, RM's 4637 & 4813) Number of petitions received: 1.

Subject: Regulatory Policies and International Telecommunications. (CC Docket No. 86–494) Number of petitions received: 4.

Subject: Amendment of §§ 22.501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel and 900 MHz Multiple Address Frequencies.

Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use by any Part 94 Eligible.

Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625–952.8375 MHz Band.

Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations (PR Docket No. 87–5, RM's 5206, 5362, 5178 & 5383) Number of petitions received: 5.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Pella, Iowa) (MM Docket No. 87–365, RM–5777) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Emporia, Kansas) (MM Docket No. 87–616, RM–6075) Number of petitions received: 1.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

[FR Doc. 88–12385 Filed 6–1–88; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200121.
Title: Greater Lafourche Port Commission Terminal Agreement.
Parties:
Greater Lafourche Port Commission
Fourchon International Shipping Terminal (FIST)

Synopsis: The agreement provides for FIST to lease certain property at Port Fourchon, Louisiana to be operated as a public marine terminal that will be governed by the Port Commission's terminal tariff.

Agreement No.: 244–200122.
Title: Port of Houston Terminal Agreement.
Parties:
Port of Houston Authority
I.T.O. Corporation (ITO)

Synopsis: The agreement designates ITO to perform or have performed freight handling and car loading/unloading services at the Port Authority's Barbours Cut Terminal.

Agreement: 224–003975–002.
Title: Port of Longview Terminal Lease Agreement.
Parties:
Port of Longview
Continental Grain Company

Synopsis: The proposed agreement amends the leased premises, and provides for construction and use of railroad trackage, and grants Lessee non-exclusive easements over other Port properties.

Agreement No.: 224–033975–003.
Title: Port of Longview, Washington Lease Agreement.
Parties:
Port of Longview
Continental Grain Company

Synopsis: The agreement grants Lessee the right to renew this Lease for seven additional one-year terms upon furnishing to the Port a notice in writing of its intention to do so not less than ninety days prior to expiration of the initial term.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: May 27, 1988.

[FR Doc. 88–12399 Filed 6–1–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 29, 1988.

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 29, 1988.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests some moderation in the expansion of economic activity in the current quarter from the rapid pace in the fourth quarter; the continuing expansion has been supported by a sharp pickup in domestic final sales while the accumulation of inventories appears to have slowed. Total nonfarm payroll employment rose substantially over the first two months of the year, although employment growth slowed somewhat in the manufacturing sector. The civilian unemployment rate fell slightly to 5.7 percent in February. Growth in industrial production moderated in early 1988 from a brisk pace during the second half of 1987. Consumer spending strengthened in January and February, buoyed by higher sales of motor vehicles. Indicators of business capital spending pointed to substantial gains in the first quarter. Housing starts rebounded in February but were still somewhat below the reduced fourth-quarter average. The nominal U.S. merchandise trade deficit changed little in January and was significantly below the fourth-quarter average. In recent months the rise in consumer and producer prices has been relatively modest on balance, reflecting developments in food and energy prices, and wage trends have shown little change.

Most interest rates were up somewhat on balance since the Committee's meeting in February, with the largest increases concentrated in bond markets. The trade-weighted foreign exchange value of the dollar

[1] Copies of the Record of policy actions of the Committee for the meeting of March 29, 1988, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551.

in terms of the other G–10 currencies fluctuated in a relatively narrow range over most of the intermeeting period, but declined somewhat in recent days.

After strengthening in January, growth of M2 and M3 remained relatively robust in February and in the first part of March. Thus far this year expansion of these two aggregates appears to have been in the upper portion of the ranges established by the Committee for 1988. M1 has grown moderately on balance since the fourth quarter. Expansion in total domestic nonfinancial debt appears to be continuing at a pace close to that in 1987.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability over time, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established growth ranges of 4 to 8 percent for both M2 and M3, measured from the fourth quarter of 1987 to the fourth quarter of 1988. The monitoring range for growth in total domestic nonfinancial debt was set at 7 to 11 percent for the year.

With respect to M1, the Committee decided in February not to establish a specific target for 1988. The behavior of this aggegate in relation to economic activity and prices has become very sensitive to changes in interest rates, among other factors, as evidenced by sharp swings in its velocity in recent years. Consequently, the appropriateness of changes in M1 this year will continue to be evaluated in the light of the behavior of its velocity, developments in the economy and financial markets, and the nature of emerging price pressure.

In the implementation of policy for the immediate future, the Committee seeks to increase slightly the degree of pressure on reserve positions. The Committee agrees that the current more normal approach to open market operations remains appropriate; still sensitive conditions in financial markets and uncertainties in the economic outlook may continue to call for some flexibility in operations. Taking account of conditions in financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable depending on the strength of the business expansion, indications of inflationary pressures, developments in foreign exchange markets, as well as the behavior of the monetary aggregates. The contemplated reserve conditions are expected to be consistent with growth in M2 and M3 over the period from March through June at annual rates of about 6 to 7 percent. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 4 to 8 percent.

By order of the Federal Open Market Committee, May 25, 1988.

Normand Bernard,

Assistant Secretary, Federal Open Market Committee.

[FR Doc. 88–12333 Filed 6–1–88; 8:45 am]

BILLING CODE 6210–01–M

Bank South Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 23, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank South Corporation*, Atlanta, Georgia; to merge with C&P Bank Corporation of Pensacola, Pensacola, Florida, and thereby indirectly acquire The Citizens & Peoples National Bank of Pensacola, Pensacola, Florida.

2. *Bank South Pensacola, Inc.*, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens & Peoples National Bank of Pensacola, Pensacola, Florida.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota-Wisconsin Bancshares, Inc.*, Newport, Minnesota and its subsidiary, Town & Country Bancshares, Inc., Newport, Minnesota; to acquire 100 percent of the voting shares of Roseville Bancorp, Inc., Roseville, Minnesota, and thereby indirectly acquire Mid America Bank, N.A., Roseville, Minnesota.

Board of Governors of the Federal Reserve System, May 26, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12334 Filed 6–1–88; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for Demonstration of Screening for Urinary Albumin Excretion Rate Among Diabetic Patients To Identify Risk for Cardiovascular and Renal Disease; Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1988 for competitive applications for a cooperative agreement to develop more effective intervention strategies to identify those at hish risk for renal and cardiovascular disease by screening diabetes patients for urinary albumin excretion rate (UAER).

Authority

This project is authorized under the Public Health Service Act: Section 301(a) (42 U.S.C. 241(a)), as amended; and section 317 (42 U.S.C. 247b(k)), as amended. The Catalog of Federal Domestic Assistance Number is 13.988.

Eligible Applicants

Eligible applicants are universities, public and private not-for-profit organizations and the official health agencies of State or local government, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and American Samoa.

Background

Three quarters of patients with insulin dependent diabetes mellitus (IDDM) die prematurely of cardiovascular and renal disease. Compared to the general population, the mortality rate of those without clinical proteinuria (a marker of diabetic kidney disease) is approximately 3 to 4 times higher, while the rate is 60 times higher for those with proteinuria, primarily from cardiovascular and renal causes. Since approximately 40 percent of IDDM

patients develop proteinuria after 30 years of diabetes, it is apparent that the vast majority of excess deaths occur among this subgroup.

High risk patients can be identified before they develop irreversible clinical proteinuria. Modern radioimmunoassay (RIA), nephelometric, and ELISA techniques afford the opportunity to identify patients with increased UAER. Although the risk associated with increased UAER appears to be continuous, greater than 50 mg/24 hrs or 30 ug/min has been suggested as a threshold for IDDM. Approximately 90 percent of the IDDM patients with increased UAER will develop clinical proteinuria within ten years.

Intensive control of blood pressure can reduce the rate of decline of the glomerular filtration rate, the best single indicator of the need for dialysis or transplantation. Normalization of blood glucose, low protein diets, and angiotensin converting enzyme inhibitors may also enhance the renal prognosis, but are less well established preventive strategies. Because the group at high risk for cardiovascular disease can now be detected early, there is a major opportunity for risk reduction, e.g., smoking cessation, blood pressure and cholesterol control, focused on this group.

End-stage renal disease (ESRD) costs Medicare over $2.8 billion annually. Diabetes accounts for 30 percent of all new patients requiring end-stage renal disease treatment in the United States. Approximately one-half of these, 15% of the total, are IDDM. UAER screening in patients with IDDM identifies those likely to develop ESRD, providing an opportunity to postpone or prevent costly ESRD care.

The prevalence and consequences of increased UAER in the much larger group of patients with non-insulin-dependent diabetes mellitus (NIDDM) have not been as well studied. Increased UAER associated with NIDDM appears to be predictive of cardiovascular and kidney disease.

A workshop of international experts in the prevention of kidney disease of diabetes mellitus, cosponsored by CDC, was held in December 1987 in conjunction with the University of Michigan School of Public Health, National Institutes of Health, the American Diabetes Association, and the National Kidney Foundation. The workshop suggests that increased UAER be defined in patients with NIDDM as greater than 150 mg/24 hrs, and encouraged further evaluation of UAER screening and appropriate interventions in public health and primary care settings.

Purpose

The purpose of this cooperative agreement is to determine the distribution of increased UAER and clinical proteinuria in diabetic populations and to demonstrate the feasibility and short term efficacy of preventive interventions based on this risk marker.

Cooperative Activities

1. Recipient Activities

A. Demonstrate the feasibility of UAER screening in selected diabetic populations.

B. Determine the prevalence of increased UAER and proteinuria, and associations with demographic and other risk factors, including duration of diabetes and hypertension.

C. Implement a program of risk reduction among patients identified with increased UAER and proteinuria targeted at primary renal and cardiovascular risk factors (e.g., hypertension, smoking, hyperlipidemia, protein intake) and glycemic control.

D. Evaluate the efficacy of programs to reduce associated risk factors and improve clinical status (including level of UAER).

E. Develop recommendations for expanded implementation of UAER screening in diabetic populations and management of patients with increased UAER and clinical proteinuria.

F. Publish and disseminate results.

2. CDC Activities

A. Provide technical assistance in the overall planning, implementation, and evaluation of project activities.

B. Provide assistance in development of study design and protocol development with the recipient.

C. Assist in the selection of method and quality control of measurement of UAER.

D. Assist in the design and evaluation of risk reduction measures.

E. Provide assistance in publishing and disseminating results.

Availability of Funds

Approximately $100,000 is available in Fiscal Year 1988 to fund one cooperative agreement. The cooperative agreement will be funded in 12 month budget periods within a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates may vary and are subject to change.

Use of Funds

These funds may be used to implement UAER screening, preventive interventions, and evaluation; they are not for routine primary care.

Review and Evaluation Criteria

1. Initial Application

The initial application for a new project period will be reviewed and evaluated according to the following criteria.

A. The need for support.

B. The extent to which professional personnel to be assigned to this project are qualified and committed to this project.

C. The adequacy of the plan for project administration.

C. The extent of the applicant's capacity to achieve functional objective and perform activities similar to those proposed in this project.

E. The extent of the recent experience the applicant has had working with diabetic populations.

F. The extent to which the study population is well-suited to the goals of the project.

G. The degree to which the objectives are consistent with the purpose of the cooperative agreement and are specific, measurable, and time-phased.

H. The degree to which the proposed methods of achieving the objectives are likely to be successful.

I. The adequacy of plans to evaluate the project.

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

2. Continuation Application

Continuation awards within the project period will be made on the basis of the following criteria.

A. The degree to which accomplishments in the prior budget period show that the applicant is meeting the objectives.

B. The extent to which the objectives for the new budget period are consistent with the purpose of the cooperative agreement, the long-term objectives, and are specific, measurable, and time-phased.

C. The extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans or personnel are likely to enhance the success of the project.

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

Reporting Requirements

Annual financial status and progress reports are required and are due 90 days after the end of each budget period. The final financial status and progress reports are due 90 days following the end of the project period.

Application Submission and Deadline

The original and two copies of the application (PHS 5161–1, revised 3/86) must be submitted to Nancy C. Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305, on or before July 15, 1988.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarked shall not be acceptable as proof of a timely mailing.)

2. Late Applications

Applications which do not meet the criteria in either 1.A. or B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. (60 day reviews.)

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grant Management Specialist, Grants Management Branch, Procurement and Grant Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, (404) 842–6575 or FTS 236–6575.

Technical assistance may be obtained from Jeffrey Newman, M.D., MPH, EIS Officer, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639–1844 or FTS 236–1844.

Dated: May 25, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–12341 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–18–M

Availability of Fiscal Year 1988 Funds To Coordinate, Develop, and Exchange Information on the Relative Efficiency and Cost-Effectiveness of Dental Caries Preventive Measures

Introduction

The Center for Disease Control (CDC) announces the availability of Fiscal Year 1988 funds for a grant to provide support for review of existing data in order to coordinate, develop, and exchange information on the relative efficiency and cost-effectiveness of dental caries preventive measures.

Authority

This project is authorized under the Public Health Service Act: Section 301(a) (42 U.S.C. 242(a)), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligible Applicants

Eligible applicants for this program include nonprofit and for profit organizations. Thus, universities, colleges, public and private organizations, including State and local governments and small, minority and/or woman-owned businesses are eligible to apply.

Background

During the past 30 years, epidemiological data from both longitudinal and cross-sectional studies of community water fluoridation have reported that drinking optimally fluoridated water from bith can reduce dental caries by 50 to 65 percent. Because of relatively low cost and universal application, adjusting the fluoride level of community water supplies to optimum has become the preferred foundation for community-based programs to prevent dental caries.

More recently, other caries prevention measures have been implemented, both to augment water fluoridation, and to compensate for it in nonfluoridated communities. Programs utilizing weekly mouthrinsing in schools, prescription of fluoride supplements, application of pit-and-fissure sealants, modification of dietary habits, supervised brushing, education, or combinations of these measures have been developed, both in fluoridated and nonfluoridated communities.

Comparisons of the cost-effectiveness of these other measures with water fluoridation, however, are based on knowledge which ic becoming increasingly dated. Observers have expressed concern over continued use of older data for such comparisons, in light of changing patterns of dental caries. This lack of current data becomes particularly serious, given the changing patterns of smooth surface, pit-and-fissure, and root caries, documented by researchers during the past decade.

The findings and conclusions resulting from this project should provide essential information regarding current relative efficiency and cost-effectiveness of various preventive measures, singly and in combination. This information will fill a serious void, thereby enabling physicians, dental professionals, and public health officials to determine the most cost-effective means of providing caries preventive measures to children and adults.

Purpose

The purpose of this grant is to provide support to identify, select, develop, and analyze information regarding current relative efficiency and cost-effectiveness of the various dental caries preventive measures, both singly and in combination, for adult and child populations; convene a conference to exchange, further develop, and gain agreement on information to be published and disseminated for use by physicians, dental professionals, and State and local public health officials with responsibility for oral health programs.

Availability of Funds

Approximately $55,000 is available in Fiscal Year 1988 to provide support for one grant. It is expected that the award will begin on or about September 1, 1988, and will be for one 12-month budget/project period. The funding estimate outlined above may vary and is subject to change.

Review and Evaluation Criteria

1. Extent to which the applicant provides evidence of need and the rationale for including particular measures to prevent dental caries, singly and in combination;

2. Degree to which the applicant provides evidence of an ability to carry out the proposed project using in-house experts as well as consultants from the fields of public health and dental research from multiple institutions and/or organizations;

3. Extent to which the applicant institution demonstrates capability to

achieve objectives similar to those of this project;

4. Extent to which in-house professional personnel and outside consultants involved in this project are qualified, including evidence of past achievements appropriate to this project;

5. Degree to which proposed objectives are clear, realistic, measurable, time-phased, and related to the purpose of this project;

6. Adequacy of plans to evaluate the objectives; and

7. Adequacy of plans for administering the project.

In addition, consideration will also be given to the extent to which the budget request is clearly explained, reasonable, and consistent with the purpose of the project.

Application Submission and Deadline

The original and two copies of the application (PHS form 5161–1) must be submitted to Nancy Bridger, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 15, 1988.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applicants

Applications which do not meet the criteria in 1.A. or B. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha D. Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 852–6575 or FTS 236–6575.

Technical assistance may be obtained from Lawrence J. Furman, Chief, Dental Disease Prevention Activity, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 639–1830 or FTS 236–1830.

Dated: May 25, 1988.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 88–12342 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 88D–0172]

Microbial Products Intended To Be Directly Fed to Animals; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7126.41 entitled "Direct-Fed Microbial Products." The CPG describes the agency's enforcement policy regarding products containing live (viable) microorganisms intended to be directly fed to animals.

ADDRESS: Compliance Policy Guide 7126.41 is available for public examinations at, and written requests for single copies may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fisher Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Edward J. Ballitch, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301–443–3336.

SUPPLEMENTARY INFORMATION: Fermentation and yeast products have been marketed as ingredients in animal feeds for many years. Such products are defined in the Association of American Feed Control Officials (AAFCO) Official Publication, Chapters 36 and 96. Recently, some manufacturers have developed and started commercial distribution of products that are purported to contain live microorganisms and that are intended to be fed or administered directly to animals. These direct-fed microbial products (sometimes called probiotic products) are considered by FDA to be a subclass of fermentation and yeast products because they are made using similar processes.

In the last few years, the marketing of direct-fed microbial products has increased greatly. Claims for these products are unproven. Some claims may be considered advertising puffery; however, FDA is concerned about the increasing use in labeling of claims for the treatment of significant animal disease conditions or for increased productivity.

In response to the proliferation of direct-fed microbial products and of the claims made in their labeling, FDA has developed and is making available CPG 7126.41 describing the agency's enforcement policy regarding such products. The CPG states that FDA may regulate a direct-fed microbial product as a new animal drug, a food additive, or an animal food, depending upon the kind of microorganisms it contains, its labeling, and other factors.

Written comments and requests for single copies of CPG 7126.41 should be identified with the docket number found in brackets in the heading of this notice and sent to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. CPG 7126.41 and any comments submitted will be available for public examination at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. The comments submitted will be used to determine whether any revisions of the CPG are warranted.

Dated: May 27, 1988.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–12395 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Review Criteria for Grants for Centers for Excellence (Fiscal Year 1988)

The Health Resources and Services Administration announces the final review criteria for Centers for Excellence authorized under the authority of section 788A of the Public Health Service Act as established by Pub. L. 100–97, the Excellence in Minority Health Education and Care Act.

The Department of Health and Human Services Appropriations Act, 1988, as contained in Pub. L. 100–202, specifies that any university which awards a

graduate degree in the health professions and which has a majority enrollment of minority students is eligible to apply and compete for a grant. It is estimated that there are 15 universities which meet these eligibility requirements and are eligible to apply for a grant. The legislative history clarifies that the intent of this program is not to duplicate support for schools which are directly funded by Federal appropriation, such as Howard University.

Section 788A specifies that Grants for Centers for Excellence may be used by a grantee school for the following purposes:

(1) To develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals;

(2) To improve the capacity of the school to recruit the retain faculty;

(3) To provide improved access to the library and information resources of the school;

(4) To establish, strengthen, or expand programs to enhance the academic performance of students in the school;

(5) To establish, strengthen, or expand programs to increase the number and quality of applicants for admission to the school; and

(6) To develop curricula and carry out faculty training programs in order to enable the school to become, for the nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome (AIDS).

Proposed review criteria were published in the **Federal Register** of March 24, 1988 (53 FR 9703). One comment was received during the 30-day comment period. However, this comment was not relevant to the review criteria.

Therefore, the following review criteria will be retained and applied in the review of applications in Fiscal Year 1988:

(1) The degree to which the applicant can arrange to continue the proposed project beyond the Federally funded project period,

(2) The degree to which the proposed project meets three or more of the purposes stated in the legislative authorization (see above);

(3) The relationship of the objectives to the implementation plan to achieve institutional improvements;

(4) The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

(5) The adequacy of the staff and faculty to carry out the program;

(6) The soundness of the budget for assuring effetive utilization of great funds;

(a) Delineation of specific objectives which are consistent with the legislative purposes; where applicable, objectives should be measurable (e.g. improvement in student and faculty attrition rate);

(b) Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives; time frame for implementing the activities, projects or services; target population; responsible staff; and facilities which will be used to accomplish the objectives;

(c) Description of a comprehensive evaluation plan inclusive of all objectives and activities;

(8) The number of individuals who can be expected to benefit from the project; and

(9) The overall impact the project will have on strengthening the school's capacity to train minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

This program is listed at 13.157 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: May 26, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-12394 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-15-M

Final Funding Priority Review Criteria for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

The Health Resources and Services Administration announces the final funding priority and review criteria which will govern the distribution of grant awards in Fiscal Year 1988 for Grants for Faculty Training Projects in Geriatric Medicine and Denistry authorized by section 788(e) of the Public Health Service Act, as amended by the Omnibus Health Act of 1986, Pub. L. 99-660 enacted on November 14, 1986, and Pub. L. 100-177, the Public Health Service Amendments of 1987.

Section 788(e) authorizes the award of grants to accredited public or private nonprofit schools of medicine or osteopathy, public or private nonprofit teaching hospitals or graduate medical education programs to provide support, including traineeships and fellowships, to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry. One-year retraining programs, one/year fellowship programs and two-year fellowship programs are eligible for support.

The Public Health Service Act requires that geriatrics training be provided through one or both of the following training options:

(1) A one-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathy, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; and

(2) A one-year or two-year internal medicine or family medicine fellowship program with emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine, and dentists who have completed postdoctoral dental education programs.

The Act further requires each project for which a grant is made under this provision to include the following:

(a) Be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

(b) Be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

(c) Be based in a graduate medical education program in internal medicine or family medicine, or a department of geriatrics in existence as of December 1, 1987;

(d) Provide participants in the project with exposure to a diversified population of elderly individuals; and

(e) Provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals.

A proposed funding priority and proposed review criteria were published in the **Federal Register** of March 22, 1988 (53 FR 9370) for public comment. No

comments were received during the 30-day comment period. Therefore, as proposed, the following review criteria and funding priority have been retained as follows:

Review Criteria

The Secretary, after consultation with the National Advisory Council on Health Professions Education will approve or disapprove all applications, taking into consideration the following review criteria:

(1) The extent to which the proposed training program will prepare phsyicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

(2) The degree to which the project plan adequately provides for meeting the project requirements including (a) through (e) as set forth above;

(3) The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The potential for the applicant to continue the program without Federal support after completion of the approved project period; and

(5) The extent to which the project will increase the number of training opportunities available for individuals who want to prepare for academic careers in geriatric medicine and dentistry.

These general criteria are consistent with other Title VII programs. The criteria specific to the program are designed to meet the legislative intent for increased opportunities for physicians and dentists to acquire skills and knowledge necessary to teach geriatric medicine and dentistry.

Funding Priority

A funding priority will be given in the review process to applicants who propose substantial specific efforts to recruit minority trainees. The need to increase training opportunities for minorities in health professions continues to be a top national priority. This priority is consistent with funding considerations in other Title VII programs.

This program is listed at 13.156 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 26, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-12393 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-15-M

Availability of Funds for Project Grants for Health Services to the Homeless Population

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of fund availability.

SUMMARY: The Health Resources and Services Administrations (HRSA) announces that noncompeting continuation applications are being accepted for a program to provide primary health care services and substance abuse services to homeless populations. In FY 1988 Congress appropriated approximately $14 million for this purpose, and each grant award will range from $50,000–$1,200,000. The grants will be administered under the provisions of section 340 of the Public Health Service Act. HRSA awarded $46 million, from FY 1987 appropriations, to 109 grantees for the provision of health care services to homeless individuals. The FY 1988 levels of appropriations of $14 million will allow the provision of services in some of the previously funded areas; therefore, eligible applicants are limited to those grantees who received awards from FY 1987 monies, as authorized under the Stewart B. McKinney Act.

DATE: To receive consideration, applications must be received in the HHS regional office, at the designated contact in the attachment, as of July 15, 1988. Applications will be considered "on-time" if they are either received on or before the established deadline date, or sent on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly receipt form a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant.

ADDRESS AND FURTHER INFORMATION: Application kits (Form PHS–5161 with revised face sheet DHHS Form 424, as approved by the Office of management and Budget (OMB) under control number 0348–0006) and additional information may be obtained from, and completed applications should be sent to, the appropriate Regional Administrator (see Appendix). Additional information about the program may be obtained from Mr. Harold Dame, Director, Health Care to the Homeless Program, 5600 Fishers Lane, Room 7A–55, Rockville, Maryland, 20857, (301) 443–1050.

SUPPLEMENTARY INFORMATION: To continue to recieve funding under this program, grantees must demonstrate successful project performance during the first budget period, i.e., provision of primary health care and substance abuse services at locations accessible to homeless individuals; arrangement for the provision of emergency health services, referral services for inpatient hospital services; outreach services; and provision of aid in establishing eligibility for and obtaining services form entitlement programs. Other factors to be considered include: Remaining unobligated balance of grant funds from the first grant award; merits of the budget request for the second budget period; and assurance provided by the applicant that the 25 percent matching requirement can be met.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372, allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by the Department of Health and Human Services will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Regional Health Asministrator.

Catalog of Federal Domestic Assistance

In the OMB Catalog of Federal Domestic Assitance the Health Services to the Homeless Population Grant Program is liested as number 13.151.

Dated: April 28, 1988.

David N. Sundwall,

Administrator.

Appendix

Regional Health Administrators

Edward J. Montminy, Regional Health Administrator, DHHS Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–1420

Vivian Chang, M.D., Regional Health Administrator, DHHS Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–2560

William Lassek, M.D., Regional Health Administrator, DHHS Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

John Whitney, Acting Regional Health Administrator, DHHS Region IV, 101 Marietta Tower, Suite 1202, Atlanta, Georgia 30323, (404) 331–2316

E. Frank Ellis, M.D., Regional Health Administrator, DHHS Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353–1385

John M. Dyer, M.D., Regional Health Administrator, DHHS Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767–3879

Mr. Youn Bock Rhee, Regional Health Administrator, DHHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Audrey H. Nora, M.D., Regional Health Administrator, DHHS Region VIII, 1961 Stout Street, Denver, Colorado 80294, (303) 844–6163

Sheridan L. Weinstein, M.D., Regional Health Administrator, DHHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556–5810

Ms. Dorothy H. Mann, Regional Health Administrator, DHHS Region X, 2901 Third Avenue, Mail Stop 501, Seattle, Washington 98121, (206) 442–0430.

[FR Doc. 88–12337 Filed 6–1–88; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Study Areas Under Fellowship Eligibility Criteria for Nursing Post-baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces the acceptance of applications for a second cycle in Fiscal Year 1988 and the study areas to be included under the eligibility criteria for Post-baccalaureate Faculty Fellowship Grants authorized by section 830(b) of the Public Health Service Act, as amended.

Approximately $430,000 is expected to be available from the approximately $901,000 authorized by the Department of Health and Human Services Appropriations Act, 1988. Of the amount, it is expected that an additional 65 awards averaging $6,552 will be made.

Purpose

Section 830(b) of the Public Health Service Act, as amended by the Nurse Education Amendments of 1985, Pub. L. 99–92, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees and, in some instances, stipends for currently employed faculty who would qualify for a post-baccalaureate faculty fellowship. Only one application will be accepted from any one school of nursing. A school with separate departments or more than one type of program must submit a combined request. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship a faculty member must:

(1) Hold a baccalaureate degree.

(2) Be licensed to practice as a registered nurse in a State.

(3) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.

(4) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1989 or sooner.

(5) Undertake a reported study, thesis or a dissertation focusing on:

a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or

b. Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; or

c. Factors within the practice setting associated with retention of nursing personnel; or

d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV).

The subject areas (c) and (d) had been proposed because they represent national health problems considered by the Secretary to require investigation.

These subject areas which expand the eligibility criteria were published in the Federal Register of March 11, 1988, (53 FR 7977 and 7978).

No comments were received during the 30 day comment period. Therefore, as proposed, these study areas are being retained as part of the eligibility criteria.

Funding preference

In addition, a funding preference will be given to those schools that have been successful in recruiting or retaining minority faculty. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

The standard application form and general instructions, Form PHS 6025–1, HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget. The OMB clearance number is 0915–0060.

Requests for application materials should be directed to: Grants Management Officer (A–23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

For technical assistance and other information regarding this program, contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333.

To receive consideration, applications must meet a deadline of July 1, 1988.

Applications shall be considered as meeting the deadline if they are either:

(1) *Received on* or before the deadline; or

(2) *Postmarked on* or before the deadline date, and received in time for submission to the review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.147 in the *Catalog of Federal Domestic Assistance*

and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 26, 1988.

David M. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-12392 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Committee to Coordinate Environmental and Health Related Programs (CCEHRP) and CCEHRP Ad Hoc Subcommittee; Annual Report on Carcinogens Meeting

Notice is hereby given of a meeting to be held at the Hubert H. Humphrey Building Auditorium (Room 107), 200 Independence Avenue SW, Washington, DC, on July 7, 1988. The Meeting is open to the public.

Background

The CCEHRP Ad Hoc Subcommittee is reviewing the criteria used in selecting the compounds for the *Fifth Annual Report on Carcinogens* in light of the purpose of the listing, as well as the process for preparation of the report.

The Annual Report on Carcinogens is a Congressionally-mandated listing of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed. To date, four reports have been published. The *Fifth Annual Report on Carcinogens* is now under preparation by the National Toxicology Program (NIP). On April 21, 1987, the NTP held an open meeting on the process used to prepare the Annual Reports on Carcinogens. The Subcommittee already has access to materials submitted in conjunction with that meeting, as well as other materials and information pertinent to its review.

The purpose of the July 7 meeting is to receive public comment on the criteria used in selecting the compounds for the *Fifth Annual Report on Carcinogens* and on the process for preparation of the report. Comments on the use of the list by the public and by State agencies are also invited. However, comments on the appropriateness of the individual compounds proposed for inclusion in the *Fifth Annual Report on Carcinogens* or on the scientific decisions leading to the selection of these compounds will not be considered, since such issues are outside the scope of the CCEHRP review.

Following opening remarks by the Subcommittee and Federal officials, presentations from the audience will be invited. Each presentation will be limited to 10 minutes. Members of the Subcommittee may address questions to those making presentations. Oral presentations should be supported by written comments that can be left with Mr. Ronald F. Coene at the meeting. Alternatively, persons unable to attend the meeting may submit written comments which will be considered by the Subcommittee in its review if received by Mr. Coene by July 9 (see address below). The Chairperson of the Subcommittee urges groups that have similar interests to consolidate their comments and present them through a single representative.

In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Mr. Coene at the address below no later than June 24, 1988.

Mr. Ronald F. Coene, Executive Secretary, CCEHRP, Room 14-101, 5600 Fishers Lane, Rockville, MD 20857.

The Chairperson may allow interested persons attending the meeting who did not submit a notice of participation to make oral presentations at the conclusion of the meeting, time permitting.

Attendance is limited only by space available. For further information regarding the meeting, please contact Mr. Coene at the above address or telephone 301-443-3155 or FTS 443-3155.

Date: May 26, 1988.

Ronald F. Coene,

Executive Secretary.

[FR Doc. 88-12391 Filed 6-1-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Acquisition and Property Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department's clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Category 3 Proposal Information

Abstract: Category 3 proposal provisions require bidders and offeror to provide specific information in their responses to solicitations which are unique to the specific requirements of the acquisition. Examples of Category 3 information provisions include: (a) Qualification and performance history statements and (b) organizational conflict of interest disclosures.

Bureau Form Number: None.

Frequency: One time, with each bid or proposal.

Description of Respondents: Contractors bidding on solicitations containing the information requirements.

Annual Responses: 27,000

Annual Burden Hours: 54,000

Departmental Clearance Officer: John Strylowski, 202-343-5345.

Jerry B. Vance,

Director, Office of Acquisition and Property Management.

May 13, 1988.

[FR Doc. 88-12304 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-RF-M

Bureau of Indian Affairs

Cheyenne River Sioux Tribe of South Dakota; Ordinance Amending Alcohol Beverages Control Law

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 585, 18 U.S.C. 1161. I certify that Resolution No. 58-88-CR—Ordinance No. 48—amending the Cheyenne River Sioux Tribal Liquor Ordinance was duly adopted by the Cheyenne River Tribal Council on March 1, 1988. The ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor in the area of Indian Country under the jurisdiction of the Cheyenne River Sioux Tribe, South Dakota and amends Ordinance No. 15 (1953), which was published in the Federal Register on November 21, 1953, 18 FR 7478. Section 1-1-2 and 1-1-3(B) apply to tribal liquor ordinance to all lands within the reservation boundaries. There is no

reference to the two exemptions to the Tribe's jurisdiction as described in 18 U.S.C. 1154(c). However, the existence of land entitled to either of the two exemptions, fee patented lands in non-Indian communities or rights-of-way through Indian reservations, is a factual question to be decided by the courts. Therefore, my certification is not a decision on whether there are exemptions to the Tribe's jurisdiction. The ordinance reads as follows:

Ralph R. Reesen,

Assistant Secretary-Indian Affairs.

Resolution No. 58–88–CR

Whereas, The Cheyenne River Sioux Tribe of South Dakota is an incorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984), and

Whereas, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-laws, and

Whereas, the Cheyenne River Sioux Tribe has chosen to regulate the introduction, sale and use of alcoholic beverages for the protection of the health, welfare and social standards of the residents of the Cheyenne River Reservation, and

Whereas, it is the considered judgment of the Cheyenne River Sioux Tribe that the introduction, sale and use of alcoholic beverages has severe health, social and economic impacts on the lives of the residents of the Cheyenne River Reservation, and

Whereas, the Cheyenne River Sioux Tribe has recognized the adverse health, social and economic costs inflicted by the use of alcoholic beverages on the residents of the Cheyenne River Reservation, and

Whereas, Article IV, Section 1(k) of the Constitution duly authorized and empowers the Cheyenne River Sioux Tribe to promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the Cheyenne River Reservation, and

Whereas, 18 U.S.C. 1161 provides that the Cheyenne River Sioux Tribe may duly adopt an ordinance regulating the introduction, sale and use of intoxicating liquor on the Cheyenne River Sioux Reservation, and

Whereas, the Tribal Council of the Cheyenne River Sioux Tribe during a Special Session on February 17, 1988 passed Resolution No. 54–88–CR adopting a liquor ordinance, and

Whereas, upon further review of the tribal liquor ordinance and upon recommended changes from the Bureau of Indian Affairs, Field Solicitor's Office in Minneapolis, Minnesota, the tribal liquor ordinance passed on February 17, 1988 has thereby included those recommended changes and additions, now

Therefore Be It Resolved, the Cheyenne River Sioux Tribe hereby adopts the Cheyenne River Sioux Tribe's Alcoholic Beverages Control Law (See attached Ordinance), and

Be It Further Resolved, the Cheyenne River Sioux Tribe hereby rescinds Resolution No. 54–88–CR, and

Be It Further Resolved, the Cheyenne River Sioux Tribe hereby directs the Tribal Secretary to submit the attached Alcoholic Beverages Control Law Ordinance No. 48 to the Secretary of the Interior for publication in the **Federal Register** as required by law for the purpose of fulfilling the notice requirements.

Certification

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 14, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 1st day of March, 1988; Regular Session and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 12 for, 0 against, 3 not voting (including Vice-Chairman) and 0 absent.

Arlene Thompson,

Secretary, Cheyenne River Sioux Tribe.

Ordinance No. 48, Alcoholic Beverages Control Law, Cheyenne River Sioux Tribe of South Dakota

Section 1. General Provisions and Definitions

Sec. 1–1–1. *Statement of Purpose.* The purpose of this Alcoholic Beverages Control Law is to regulate the activities of the manufacture, distribution, sale and consumption of liquor on the Cheyenne River Sioux Reservation. Any person desiring to engage in the possession, sale, trade, transport or manufacture of alcoholic beverages on the Cheyenne River Sioux Indian Reservation shall comply with the rules and regulations set forth in this Alcoholic Beverages Control Law. This Ordinance shall be cited as the "Cheyenne River Sioux Alcoholic Beverages Control Law" and, pursuant to the constitutional and inherent sovereignty of the Cheyenne River Sioux Tribe, shall be deemed an exercise of the Tribe's powers for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Cheyenne River Sioux Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above declared purpose. It is the Cheyenne River Sioux Tribe's intent in enacting this Ordinance to prohibit all traffic in liquor on the Cheyenne River Sioux Reservation except to the extent allowed and permitted under the express terms of this Ordinance.

Sec. 1–1–2. *Applicability.* This Ordinance shall apply to all persons engaged in the activities described herein on any and all lands and areas within the exterior boundaries of the Cheyenne River Sioux Reservation, including lands held in fee, and all other lands subject to the jurisdiction of the Cheyenne River Sioux Tribe.

Sec. 1–1–3. *Definitions.* The terms used in this Alcoholic Beverages Control Law, unless the context plainly otherwise requires, shall mean:

(A) "Alcoholic beverage," any distilled spirits, wine and malt beverages as defined in this Ordinance.

(B) "Cheyenne River Indian Reservation" shall include any and all lands within the exterior boundaries of the Cheyenne River Sioux Reservation established by the Act of March 2, 1889. 48 Stat. 888, whether said lands are trust, allotted or lands held in fee patent status.

(C) "Tribal Council" shall mean the governing body of the Cheyenne River Sioux Tribe.

(D) "Distilled spirts," ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use containing not less than one-half of one percent of alcohol by volume.

(E) "Malt beverage," beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption containing not less than one-half of one percent of alcohol by volume, and commonly referred to as beer or ale.

(F) "Distiller" means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any distillery or other establishment for the production, rectifying, blending, or bottling of intoxicating liquor other than beer.

(G) "Sale," the transfer, for a consideration, of title to any alcoholic beverage.

(H) "Package" means the bottle or immediate container of any alcoholic beverage.

(I) "On Sale," the sale of any alcoholic beverage for consumption only upon the premises where sold.

(J) "Off Sale," the sale of any alcoholic beverage, for consumption off the premises where sold.

(K) "Wholesaler" means any person who sells alcoholic beverages to retailers for resale.

(L) "On-Sale dealer," any person who sells, or keeps for sale, any alcoholic beverage for consumption on the premises where sold.

(M) "Manufacturer," means any person who owns, or who himself or through others, directly or indirectly, operates or aids in operating any facility which produces alcoholic beverages.

(N) "Package dealer," any person other than a distiller, manufacturer, or wholesaler, who sells, or keeps for sale, any alcoholic beverage for consumption off the premises where sold.

(O) "Retail license," an on- or off-sale license issued under the provisions of this Ordinance.

(P) "Retailer," or "retail dealer" any person who sells alcoholic beverages for other than resale.

(Q) "Transportation company," or "transporter," any common carrier or operator of a private vehicle transporting or accepting for transportation any alcoholic beverage destined to be delivered to the Cheyenne River Sioux Reservation, but not including transportation by carriers in interstate commerce where the shipment originates outside of the state and is destined to a point outside of the state.

(R) "Wine" any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar and containing not less than one-half of one percent of alcohol by volume but not more than twenty-four percent of alocohol by volume.

(S) "Person" means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.

(T) "Revenue Department" means the Cheyenne River Sioux Tribal Revenue Department.

(U) "Solicitor" means any peson employed by a licensed wholesaler within or without the territorial limits of the Cheyenne River Sioux Reservation, or by any distiller or manufacturer within or without the Reservation, who solicits orders of intoxicating liquor from wholesale or retail dealers within the Reservation.

(V) "Treasurer" means the duly elected and acting Treasurer of the Cheyenne River Sioux Tribe.

Section 2. Licensing Policies and Procedures

Sec. 2–1–1. *Granting of License.* Any person authorized to sell, trade, transport or manufacture alcoholic beverages on the Cheyenne River Sioux Reservation shall make application for a license and present the completed application to the Cheyenne River Sioux Revenue Department. The liquor license fees shall be in annual payments, due prior to the 1st day of January of each calendar year, for the following prescribed fees:

Sec. 2–1–2. *Wholesale Licensing.* The fee for an annual wholesale license shall be set by Tribal Council resolution at no less than Two Hundred Dollars ($200.00) and no more than Three Thousand Dollars ($3,000.00).

Sec. 2–1–3. *Retail Licensing.* The fee for an annual retail license shall be set by Tribal Council resolution at not less than One Hundred Dollars ($100.00) and no more than Twenty-Five Hundred Dollars ($2,500.00).

Sec. 2–1–4. *Transport Licensing.* The fee for an annual transport license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than One Thousand, Five Hundred Dollars ($1,500.00).

Sec. 2–1–5. *Operating of a plant distilling intoxicating liquor.* The fee for an annual distilling plant shall be set by Tribal Council resolution at not less than One Thousand Dollars ($1,000.00) and no more than Five Thousand Dollars ($5,000.00).

Sec. 2–1–6. *Solicitors.* The fee for an annual solicitors license shall be set by Tribal Council resolution at not less than Two Hundred Dollars ($200.00) and no more than Seven Hundred Fifty Dollars ($750.00).

Sec. 2–1–7. *Qualifications for License.* No license shall be issued unless the applicant shall be twenty-one years of age, has filed a sworn application, accompanied by the required fee, showing the following qualifications and subject to the following standard:

(A) An applicant, other than a corporation, must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, partnership, joint venture, association, municipal corporation, estate, trust, business receiver or firm, the manager of the licensed premises must be a resident of the United States and a person of good moral character. Officers and directors of corporations, and partners, and directors of corporations, and partners, joint venturers, principals of associations and municipal corporations, trustees, business receivers and members of firms must be legal residents of the United States and persons of good moral character. Corporate applicants must also be registered with the Cheyenne River Sioux Tribe as entitled to do business on the Cheyenne River Sioux Reservation.

(B) The Tribal Council may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

(C) The Tribal Council shall issue a license only if the qualifications set forth herein are satisfied and if it concludes, within its discretion, that the best interests of the Reservation community shall be served.

Sec. 2–1–8. *Public Comments.* Before the issuance of any tribal liquor license, the Cheyenne River Sioux Tribe shall allow comments from the public. The Tribal Council, acting in its executive capacity when hearing and determining matters within the terms and conditions of this Ordinance shall be the determining authority for the granting of any tribal liquor license.

Section 3. Prohibitions

Sec. 3–1–1. *General Prohibition.* It shall be unlawful to manufacture for sale, sell, or offer or keep for sale or transport alcoholic beverages on the Cheyenne River Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

Sec. 3–1–2. *Disposal Prohibited on Certain Days.* No license of any class shall sell intoxicating liquor on Sunday, Memorial Day, and Christmas Day.

Sec. 3–1–3. *Prohibition as to Persons Under Twenty-One Years of Age.* No licensee of any class shall sell intoxicating beverages to any person under the age of twenty-one years of age.

Sec. 3–1–4. *Disposal Prohibited During Certain Hours.* No licensee shall sell or give liquor to any person on the licensed premises between the hours of two o'clock a.m. and seven o'clock a.m., Mondays through Saturdays. The off-sale dealers shall not sell alcoholic beverages to any person between the hours of Twelve o'clock a.m. (midnight)

and seven o'clock a.m., Mondays through Saturdays.

Section 4. Penalties Imposed For Violations Of Ordinance

Sec. 4–1–1. *General Penalties.* Anyone violating this Ordinance shall be subject to civil penalties and/or suspension or revocation of their tribal license according to a schedule of penalties established by the Tribal legal Department and approved by the Tribal Council, which schedule shall be available to anyone upon request.

Sec. 4–1–2. *Hearing on Alleged Violations.* Anyone having information that a person has violated any provisions of this Ordinance may file with the Tribal Council or Revenue Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Revenue Department shall set the matter for a hearing not later than the next regular meeting of the Tribal Council. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than five days before the hearing. A record of such hearing will be made by stenographic notes or by the use of an electronic recording device. The person shall have the rights to be represented by counsel, question witnesses and examine the evidence against him as well as to present evidence and witnesses in his own defense.

Sec. 4–1–3. *Suspension or Revocation of License.* If after such hearing the Tribal Council finds the violation set forth in the affidavit has been proved by a preponderance of the evidence, an order shall be served on the licensee revoking or suspending the license for a period of time and imposing such other civil penalties as are consistent with a policy established by the Tribal Legal Department and approved by the Tribal Council. Such action may be appealed to the Tribal Court, except that the order revoking or suspending the license, or imposing other penalties, shall be effective while the appeal is pending.

Sec. 4–1–4. *Other Penalties.* The Tribal Council may impose other civil penalties, including forfeiture of property, according to a policy established by the Tribal Legal Department and approved by Council, for any violation of this Ordinance including the failure to apply for or to possess the appropriate tribal license. Such tribal action imposing such penalties on any person may be appealed to Tribal Court, except that the imposition of the penalties shall be effective while the appeal is pending.

Sec. 4–1–5. *Powers of Tribal Chairman.* The Tribal Chairman, or his designee, at a hearing under this Ordinance shall have the power to administer oaths and subpoena and examine witnesses.

Sec. 4–1–6. *Appeal Rights.* In any appeal to the Tribal Court concerning the denial of an application for license, the suspension or revocation of a license, or the imposition of any civil penalty hereunder, the Tribal Court shall not grant a *de novo* review. The Tribal Council's actions shall be upheld unless the Court concludes it has acted arbitrarily, capriciously, in abuse of its discretion, or not in accordance with this law.

Section 5. Exceptions

Sec. 5–1–1. *Exceptions to this Ordinance.* The provisions of this Ordinance shall not apply to the sale of alcoholic beverages, or to ethanol, used or intended for use, for the following purposes:

(A) For scientific research or manufacturing products other than liquor;

(B) By a physician, medical or dental clinic, or hospital;

(C) In preparations not fit for human consumption such as cleaning compounds and toilet products, or flavoring extracts;

(D) By persons exempt from regulation in accordance with the laws of the United States; or

(E) For sacramental use such as wines delivered to priests, rabbis, and ministers.

Section 6. Miscellaneous Provisions

Sec. 6–1–1. *Agreement by Licensee to Grant Access for Inspection Purposes.* Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinets, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Tribal Council. These inspections shall be conducted by a duly appointed designee of the Tribal Council, or tribal or federal police. All books and records dealing with the sale and ownership of alcoholic beverages shall be open for inspection purposes by the duly authorized tribal authorities.

Sec. 6–1–2. *Transferrability.* No license issued pursuant to this Ordinance shall be transferrable; provided, however, upon death of an individual licensee, the personal representative of the estate may operate under a valid license for thirty (30) days after the licensee's death, so long as said personal representative shall apply to the Tribe for a new license within said thirty (30) day period.

Section 7. Severability

Sec. 7–1–1. *Severability.* If for any reason, or circumstances, any provision(s) or section(s) of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections shall not be affected in the application of this Ordinance or to any person covered by this Ordinance.

Section 8. Effective Date; Repeal

Sec. 8–1–1. *Ordinance Nos. 15 and 16.* Ordinance Nos. 15 and 16 adopted by the Cheyenne River Sioux Tribe, and duly published in the **Federal Register**, relating to the sale of liquor on the Cheyenne River Sioux Reservation, respectively, including all amendments thereto, are hereby repealed upon publication of this Ordinance here in the **Federal Register.** Any person now operating subject to a license issued pursuant to Ordinance 15 or 16 may continue to so operate until that license expires on December 31, 1988. Thereafter, renewals shall be subject to the terms and conditions of this Ordinance. Any person subject to license pursuant to Ordinance 15 or 16, but who does not currently possess a license, shall become immediately subject to the terms of this Ordinance upon its publication in the **Federal Register.**

Certification

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribal Council, certify that the Tribal Council is composed of fifteen (15) members, of whom 15, constituting a quorum, were present at a meeting, duly and regularly called, noticed and convened and held in Eagle Butte, South Dakota; and that the foregoing ORDINANCE NO. 48 was duly adopted at such meeting by an affirmative vote of 12 for, 0 against, 3 abstaining (including Vice-Chairman) and 0 absent, on March 1, 1988, Regular Session.

Arlene Thompson,

Secretary of the Cheyenne River Sioux Tribe.

[FR Doc. 88–12401 Filed 6–1–88; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AK–965–4213–15; F–14939–B]

Alaska Native Claims Selection; Stebbins Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue

conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Stebbins Native Corporation for 78.16 acres. The lands involved are in the vicinity of Stebbins, Alaska.

U.S. Survey No. 6000, Alaska, situated approximately ¾ mile northwesterly of Stebbins, Alaska, on the most northwesterly portion of Cape Stephens, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 5, 1988, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary K. Seitz,

Chief, Branch of Northwest Adjudication.

[FR Doc. 88–12437 Filed 6–1–88; 8:45 am]

BILLING CODE 4310–JA–M

[OR–096–08–6332–02: GP8–144]

Temporary Closure of Public Lands; Lane County, OR

ACTION: Temporary closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, camping, shooting, hiking and sightseeing, from August 1, 1988 through December 31, 1988. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W.,
Sec. 19: SE¼SE¼, excluding the right-of-way of Oregon State Highway 36
Containing approximately 36 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the contractor authorized to construct the Lake Greek Falls Fish Ladder project and their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7 which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points public access.

The purpose of this temporary closure is to provide for public safety and the protectioin of property and equipment during the mobilization, construction and de-mobilization phases of the Lake Greek Falls Fish Ladder project.

EFFECTIVE DATE: August 1, 1988 through December 31, 1988.

ADDRESS: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregan 97440.

FOR FURTHER INFORMATION CONTACT: Wayne E. Elliott, Coast Range Area Manager, Eugene District Office, at (503) 683–6989.

Dated: May 24, 1988.

Wayne D. Elliott,

Area Manager.

[FR Doc. 88–12339 Filed 6–1–88; 8:45 am]

BILLING CODE 4310–33–M

[WY–040–08–4300–90]

Intent To Prepare a Revised Environmental Impact Statement; Rock Springs District, WY

May 20, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a revised Environmental Impact Statement (EIS) for the Wilderness Study Areas in the Rock Springs District, Wyoming.

SUMMARY: This notice is to inform the public that the Bureau of Land Management is preparing a revised draft EIS for wilderness in the Rock Springs District, which will supersede a draft EIS prepared in 1983. Scoping was completed during the preparation of the first draft EIS in 1983. A public hearing will be scheduled after release of the revised draft EIS, currently scheduled for August 1988. The purpose of the proposed action is to fulfill BLM's responsibilities under the Federal Land Policy and Management Act of 1976 to identify areas suitable for wilderness designation.

DATES: The revised draft EIS is scheduled to be completed in August 1988. A public hearing will be scheduled at least 30 days after release of the revised draft EIS.

ADDRESS: For further information contact the Bureau of Land Management at Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming, 82902–1869.

FOR FURTHER INFORMATION CONTACT: All inquiries and comments should be directed to Alan Stein, Wilderness EIS Team Leader, Rock Springs District Office, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

SUPPLEMENTARY INFORMATION: The revised draft EIS will analyze the environmental impacts of designation or nondesignation of 13 wilderness study areas (WSAs) in the Rock Springs District. A draft EIS was issued for these WSAs in February 1983. The 13 WSAs cover a total of 219,308 acres. This revised draft EIS will supersede the February 1983 draft EIS. The only comments that will be addressed in the preparation of the final EIS will be comments received during the public comment period on the revised draft EIS.

Several changes have occurred since the original draft EIS was published, resulting in a need to prepare and circulate a revised draft EIS. These changes include: (1) Oil and gas leases issued before the passage of the Federal Land Policy and Management Act have expired; (2) new Partial Wilderness alternatives were developed for 3 of the WSAs; (3) the recommendation for 4 of the WSAs were changed from those in the 1983 draft EIS; and (4) five years have passed since the 1983 draft EIS was issued.

Hillary A. Oden,

State Director.

[FR Doc. 88–12338 Filed 6–1–88; 8:45 am]

BILLING CODE 4310–22–M

[OR-933-08-4332-09: GP8-136]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of combined U.S. Geological (USGS) and U.S. Bureau of Mines (USBM) "Mineral Survey Reports" for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Owyhee Canyon WSA (OR-003-195), Malheur County, Oregon (USGS Bulletin 1719-E);
2. High Steens and Little Blitzen Gorge WSAs (OR-002-085F, and OR-002-086F), Harney County, Oregon (USGS Bulletin 1740-A);
3. Pueblo Mountains WSA (OR-002-081/NV-020-642), Harney County, Oregon, and Humboldt County, Nevada (USGS Bulletin 1740-B);
4. Honeycombs WSA (OR-003-77A), Malheur County, Oregon (USGS Bulletin 1741-A);
5. North Sisters Rocks WSA (OR-012-008), Curry County, Oregon (USGS Open-File Report 88-12); and
6. Devils Garden Lava Bed, Squaw Ridge Lava Bed, and Four Craters Lava Bed, WSAs (OR-001-002, OR-001-003, and OR-001-022), Lake County, Oregon (USGS Bulletin 1738-A).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to USGS/USBM. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are avaialble for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236-7476.

DATE: The public review of the mineral survey reports named in this notice shall conclude on August 12.

ADDRESS: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Durga N. Rimal, Division of Minerals at (503) 231-6951 or David Harmon, Division of Lands and Renewable Resources at (503) 231-6823, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and USBM are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas. There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 6 reports are the first of approximately 45 combined mineral survey reports that will be prepared by USGS/USBM. The next batch of mineral survey reports will be available for public review during the fall or winter of 1988.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decision. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report.
2. Mineral(s) of interest.
3. A map or land description by legal subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area.
4. Information and documents that depict the new data or reinterpretation of data.
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGHS, or USBM assigned to review the information.

Geologic maps, cross sections, drill hole records and sample analyses, etc. should be included. Published literature and reports may be cited. Each comment should be limited to a specific Wilderness Study Area. All information submitted and *marked confidential* will be treated as proprietary data and will not be released to the public without consent.

Dated: May 19, 1988.

Paul M. Vetterick,

Deputy State Director.

[FR Doc. 88-12303 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Project Agreement and Amendment.

Abstract: The Service administers grant-in-aid programs under the Federal Aid in Fish and Wildlife Restoration Act, the Anadromous Fish Conservation Act, and Endangered Species Acts. The program Agreement is used by State fish and wildlife agencies (grantees) to submit an estimate of grant projects cost and cost sharing for a specified period, usually annually. The Service uses the Agreement to obligate funds and as a commitment by both parties (Federal/State). The Amendment is used to revise an approved agreement.

Service Form Number(s): 3-1552 (Project Agreement); 3-1592 (Project Agreement Amendment).

Frequency: Annually.
Description of Respondents: State and local Governments.
Annual Responses: 56.
Annual Burden Hours: 1,456.
Service Clearance Officer: James E. Pinkerton, 202–653–7500, Room 859 Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: April 25, 1988.

Ronald E. Lambertson,

Assistant Director, Fish and Wildlife Enhancement.

[FR Doc. 88–12305 Filed 6–1–88; 8:45 am]

BILLING CODE 4310–55–M

Report on Implementation of Title VIII of the Alaska National Interest Lands Conservation Act; Availability

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a final 1987 report on the implementation of the subsistence management and use provisions of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3121, for submission to the President of the Senate and the Speaker of the House of Representatives. In accordance with the provisions of section 813, the report is being made available to the public.

FOR FURTHER INFORMATION CONTACT: Ron Thuma, Subsistence Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786–3371.

Copies of the section 813 report have been sent to all participating Federal and State agencies, local advisory committees and regional council members. Additionally, all others who have already requested copies have been added to the mailing list. Others wanting copies of the report should contact Mr. Thuma. Copies of the report are also available in the Anchorage regional office of the Service at the above address.

SUPPLEMENTARY INFORMATION: The U.S. Fish Wildlife Service has produced the 1987 periodic report to Congress on Subsistence management and use of fish and wildlife on Federal lands, as required by section 813 of ANILCA. The Service produced this comprehensive document in consultation with other Federal land managing agencies in Alaska, and with the Alaska Department of Fish and Game. The report provides an overview of subsistence management and use in Alaska, based on consultations with various public agency personnel and information from existing literature and studies.

As required by section 813, the report includes:

(1) An evaluation of the results of the monitoring undertaken by the Secretary pursuant to suction 806 of ANILCA.

(2) The status of fish and wildlife populations on public lands that are subject to subsistence uses.

(3) A description of the nature and extent of subsistence uses and other uses of fish and wildlife on public lands.

(4) The role of subsistence uses in the economy and culture of rural Alaska.

(5) Comments on the Secretary's report by the State, the local advisory committees and regional advisory councils and other appropriate persons and organizations.

(6) A description of those actions taken, or which may need to be taken, to permit the opportunity for continuation of subsistence activities on public lands.

(7) Such other recommendations the Secretary deems appropriate.

A draft of the report was distributed for public review. Eleven different organizations provided comments including: Five federal agencies; three state agencies; and three private or Native organizations. Changes were made in the report to reflect comments concerning substantive errors or misrepresentations. All comments were appended in their entirety in the final report. The report will now be submitted to the President of the Senate and the Speaker of the House.

Dated: April 13, 1988.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 88–12390 Filed 6–1–88; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT–717563]

Applicant: Dave Chovanic, Sandusky, OH

The applicant requests a permit to export and reimport the following captive-born animals: one male leopard (*Panthera pardus*), six male Bengal tigers (*Panthera tigris*), and three male and two female Siberian tigers (*Panthera tigris altaica*). The animals will be exhibited in a manner designed to educate the public regarding their ecological roles and conservation needs.

[PRT–688706]

Applicant: Waimea Arboretum Foundation, Haleiwa, HI

The applicant requests a permit to remove and reduce to possession (take) from federal lands in Hawaii, endangered and threatened species of plants for export and re-import for the purposes of scientific research and propagation of the species.

[PRT–727512]

Applicant: John Wildman, Washington, DC

The applicant requests a permit to purchase in interstate commerce one male and two female scarlet-chested parakeets (*Neophema splendida*) from Pet Depot, Rockford, Michigan, for the purpose of enhancement of propagation.

[PRT–728040]

Applicant: St. Louis Zoological Park, St. Louis, MO

The applicant requests a permit to export up to four separate shipments of plasma samples taken from one live captive born female cheetah (*Acinonyx jubatus*) to the University of British Columbia, Health Service Center Hospital, Vancouver, BC, Canada for determination of bromovinyldeoxyuridine (BVDU) analysis. This drug is to be used in an attempt to treat feline herpesvirus.

Applicant: Duke University Primate Center, Durham, NC

[PRT–728008]

The applicant requests a permit to import two male and two female diademed sifakas (Propithecus diadema), to be captured in the wild in Madagascar, for the purpose of enhancement of the propagation and survival of the species through captive propagation. The applicant presently houses a male and female of this species. These presently are the only individuals in captivity.

[PRT–7280102]

Applicant: Glasshouse Works, Stewart, OH

The applicant requests a permit to sell in interstate and foreign commerce and export artificially propagated specimens of the Arizona agave (*Agave arizonica*).

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, of data to the Director at the above address. Please refer to the appropriate

PRT number when submitting comments.

Date: May 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-12345 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

[PRT-727645]

Applicant: F.M. "Cotton" Gordon, Lake George, CO

The applicant requests a permit to import a sport-hunted trophy of one male bonetbok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

[PRT-727828]

Applicant: Phoenix Zoo, Phoenix, AZ

The applicant requests a permit to purchase in interstate commerce from International Animal Exchange one male and two female Parma wallabies (*Macropus parma*) that will be imported into the U.S. by International Animal Exchange (PRT-724754). The wallabies are to be imported from the Wellington Zoo in Wellington, New Zealand for enhancement of the propagation of the species. They were born in captivity at the Wellington Zoo.

[PRT-727958]

Applicant: The Peregrine Fund, Boise, ID

The applicant requests a permit to export ten captive-born Mauritius kestrals (*Falco punctatus*) born in the United States, to the Conservator of Forests, Forestry Department, Curepipe, Mauritius for release into the wild for the purpose of enhancement of propagation of the species.

[PRT-727416]

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to take, import, export and purchase in interstate or foreign commerce blood, semen, other tissues or whole carcasses from any endangered wildlife throughout the world for scientific research (genetic, reproductive and other biomedical evaluation). The tissues are to be obtained from animals in the wild and in captivity.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: May 17, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-12340 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Chicago Zoological Society

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18).

Applicant

[File No. PRT-728111]

Name: Chicago Zoological Society Brookfield Zoo

Address: 3300 Golf Road Brookfield, IL 60513

Type of Permit: Public Display

Name of Animals: Walrus (Odobenus rosmarus) One

Summary of Activity to be Authorized: The applicant proposes to import this animal from the Copenhagen Zoo, Denmark, for the purpose of public display.

Source of Marine Mammals for Public Display: Copenhagen Zoo; animal removed from wild in USSR in 1983.

Period of activity: July 1 through December 1988.

Concurrent with the publication of this notice in the Federal Register, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written date or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), P.O. Box 27329, Washington, DC 20038-7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 K Street, NW., Washington, DC 20005.

Dated: May 25, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-12344 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on The Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) dand Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator and location	Date
Samedan Oil Corporation, structure removal operations, ES/SR 87-020A; West Cameron Area, Block 67, Lease OCS-G 3256, 10 miles south of Cameron Parish, LA.	Feb. 22, 1988.
Chevron U.S.A. Inc., structure removal operations, ES/SR 87-028; Grand Isle Area, South Addition, Block 86, Lease OCS-G 5660, 33 miles south of Fourchon Beach, LA.	Feb. 10, 1988.
Shell Offshore Inc., structure removal operations, ES/SR 87-036; Eugene Island Area, Block 116, Lease OCS 0478, 24 miles south of Atchafalaya Bay, LA.	May 4, 1988.
Diamond Shamrock Offshore Partners Limited, structure removal operations, ES/SR 87-040/040A; Vermilion Area, South Addition, Block 264, Lease OCS-G 3983, 75 miles south of Vermilion Parish, LA.	Feb. 10, 1988.
Shell Offshore Inc., structure removal operations, ES/SR 87-041; Mobile Area, Block 909, Lease OCS-G 5072, 15 miles south of Dauphin Island, AL.	Feb. 26, 1988.

Activity/Operator and location	Date
Texaco USA, structure removal operations, ES/SR 88-001; West Cameron Area, South Addition, Block 547, Lease OCS-G 4408, 103 miles south of Sabine PASS, TX.	Feb. 4, 1988.
TXP Operating Company, structure removal operations, ES/SR 88-002; East Cameron Area, South Addition, Block 263, Lease OCS-G 3299, 90 miles south of Cameron Parish, LA.	May 3, 1988.
ODECO Oil & Gas Company, structure removal operations, ES/SR 88-005; West Cameron Area Block 153, Lease OCS-G 4756, 22 miles south of Cameron Parish, LA.	Jan. 22, 1988.
Tenneco Exploration & Production, structure removal operations, ES/SR 88-006; South Marsh Island Area, North Addition, Block 257, Lease OCS-G 2303, 22 miles south of Iberia Parish, LA.	May 5, 1988.
Mobil Exploration & Producing U.S. Inc., structure removal operations, ES/SR 88-007; West Cameron Area, Block 33, Lease OCS 0265, 4 miles south of Cameron Parish, LA.	Jan. 29, 1988.
Mobil Exploration & Producing U.S. Inc., structure removal operations, ES/SR 88-009A; West Cameron Are, Block 33, Lease OCS 0265, 4 miles south of Cameron Parish, LA.	May 5, 1988.
CNG Petroleum, structure removal operations, ES/SR 88-021; High Island Area, South Addition, Block A-495, Lease OCS-G 6229, 100 miles southeast of Galveston, TX.	Feb. 26, 1988.
Texaco USA, structure removal operations, ES/SR 88-036; Breton Sound Area, Block 56 (N/2), Lease OCS-G 4123, 66 miles south of Biloxi, MS.	Apr. 29, 1988.
Texaco Producing, three exploratory wells, SEA No. N-2870; Pensacola Area, Block 996, Lease OCS-G 6396, 22 miles south of Walton County, FL.	Feb. 26, 1988.
Marathon Oil Company geophysical exploration using explosives, SEA No. L87-105; South Pass Blocks 89 and 88, 21 miles offshore Louisiana.	Mar. 7, 1988.
Chevron U.S.A. Inc., structure removal operations, ES/SR 88-045; Eugene Island Area, Block 238, Lease OCS-G 0982, 68 miles south of St. Mary Parish, LA.	May 10, 1988.
Sohio Petroleum Company, six exploratory wells, SEA No. N-2881/2288; Destin Dome Area, Blocks 81 and 82, Leases OCS-G 6408/6409, respectively, 22 miles southwest of Panama City, FL.	Feb. 29, 1988.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Date: May 20, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12332 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5453, Block 395, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration-Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, putsuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, the Notice is to inform the public, pursuant to §930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12327 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Pelto Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pelto Oil Company has submitted a DOCD describing the activities it

proposes to conduct on Lease OCS-G 5693, Block 68, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 23, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12306 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum, Unit Operator of the South Timbalier Block 185 Federal Unit Agreement No. 14-08-0001-12335, has submitted a DOCD describing the activities it proposes to conduct on the South Timbalier Block 185 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on May 17, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2660.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12307 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Texas Petroleum

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 9536, Block 28, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intercoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 20, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS

Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 23, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-12328 Filed 6-1-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on June 23-24, 1988 in Room 105 of The River Inn, 924-25th Street, NW., Washington, DC. Topics for discussion will be "Educational Technologies in Basic Education in Developing Countries" and "Coastal and Inland Fisheries Research." The Committee will also continue discussion on A.I.D.'s future linkages and relationships with advanced developing countries, which was a topic at the March 31 meeting.

The meeting will begin at 9:00 a.m. on both days and adjourn at 5:30 p.m. on June 23 and 12:00 noon on June 24. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time available for the meeting permits. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875-4005 or Room 309, 1601 North Kent Street, Rosslyn, Virginia.

Date: May 19, 1988.

Curtis R. Jackson,

A.I.D. Representative Research Advisory Committee.

[FR Doc. 88-12326 Filed 6-1-88; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-268]

Certain High Intensity Retroreflective Sheeting; Commission Determination Not To Review Initial Determination and Schedule For Filing of Written Submissions on Remedy, The Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination finding a violation of section 337 of the Tariff Act of 1930 and request for submission of written comments.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tarriff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Laurie B. Horvitz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1107.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

On April 15, 1988, the presiding administrative law judge (ALJ) issued an ID finding a violation of section 337 in the unauthorized importation and sale of certain high intensity retroreflective sheeting with the effect and tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Petitions for review were filed by the respondents in the investigation and by the Commission investigative attorney. No comments were received from other Government agencies.

Having examined the record, the Commission has concluded that the ID does not warrant review.

Since the Commission has found that a violation of section 337 has occurred, the Commission may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that relief is appropriate, it must also consider the effect of that relief upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on June 13, 1988. Reply submissions on these issues must be filed no later than the close of business on June 20, 1988. Interested government agencies and members of the public may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on

June 20, 1988. No further submissions will be permitted.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this matter.

Additional Information

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the investigation. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the **Federal Register** on July 15, 1987 (52 FR 26577).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: May 26, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–12403 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–240]

Certain Laser Inscribed Diamonds and Method of Inscription Thereof; Institution of Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Institution of enforcement proceeding for violation of a consent order pursuant to 19 CFR 211.56(c).

SUMMARY: Notice is hereby given that a complaint was docketed with the U.S. International Trade Commission on May 25, 1988 pursuant to sections 333 and 337 of the Tariff Act of 1930 (19 U.S.C. 1333 and 1337) instituting an enforcement proceeding to determine the extent of a violation of a consent order entered in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1577.

Authority: The authority for institution of this proceeding is contained in sections 333 and 337 of the Tariff Act of 1930 and in § 211.56 of the Commission's Rules of Practice and Procedure (19 CFR 211.56).

SUPPLEMENTARY INFORMATION: On February 6, 1986, the Commission instituted Investigation No. 337–TA–240 pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) based upon a complaint filed by Lazare Kaplan Inc. ("Lazare Kaplan") alleging that I.B. Goodman Mfg. Co., Inc. ("Goodman") and Sears, Roebuck and Co. ("Sears") were engaged in the importation into and sale in the United States of certain laser-inscribed diamonds that were inscribed by a process which, if practiced in the United States, would infringe U.S. Letters Patent 4,392,476 ("the '476 patent") owned by Lazare Kaplan. 51 FR 6181 (February 20, 1986). After institution of the investigation, Aharon Schwartz & Sons ("Schwartz"), a corporation organized and existing under the laws of the state of Israel, was added as a respondent. 51 FR 16236 (May 1, 1986).

On July 22, 1986, the complainant, all three of the respondents (Sears, Goodman, and Schwartz), and the Commission Investigative Attorney moved to terminate the investigation on the basis of a Consent Order Agreement, a Consent Order, and a Settlement Agreement. On August 19, 1987, the presiding administrative law judge issued an Initial Determination (Order No. 12) granting the joint motion to terminate the investigation. On September 15, 1986, the Commission determined not to review the Initial Determination and issued the Consent Order, thereby terminating the investigation. 51 FR 33935 (September 24, 1986).

The Consent Order requires, *inter alia*, respondent Schwartz to submit quarterly certifications to the Office of Unfair Import Investigations ("OUII" or "staff") that the laser inscribed diamonds imported by Schwartz are inscribed by a particular process and destined for Goodman. Schwartz notified the staff on September 15, 1987, that two of the four quarterly certifications that it had previously submitted, those dated April 27, 1987, and July 28, 1987, were erroneous and that it had imported 200–500 diamonds in violation of the Consent Order. Complainant contends, based on its review of sample diamonds provided by Schwartz, that violations of the Consent Order may have occurred in 1986 as well 1987 and that more than 200 to 500 stones were imported in violation of the consent order.

In accordance with § 211.56 of the Commission's Rules of Practice and Procedure (19 CFR 211.56), responses to the complaint must be filed by the parties within fifteen (15) days after the date of receipt of the complaint.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1810.

By order of the Commission.

Issued: May 25, 1988.

Kenneth R. Mason,

Secretary

[FR Doc. 88–12404 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–279]

Certain Plastic Light Duty Screw Anchors; Commission Decision Not To Review an Initial Determination Amending Complaint and Notice of Investigation To Add a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination amending complaint and notice of investigation to add a respondent.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge amending the complaint and notice of investigation in the above-captioned investigation to add Hsin Chang Industrial Hardware Corp. as a respondent.

FOR FURTHER INFORMATION CONTACT: Mitchell Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 252–1087.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

On April 22, 1988, the Commission investigative attorney filed a motion (Motion No. 279–9) to amend the notice of investigation to add Hsin Chang Industrial Hardware Corp. as a respondent. The presiding administrative law judge issued an ID (Order No. 16) granting the motion on May 12, 1988. No petitions for review of the ID or government agency comments were received.

Copies of the ID and other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1802. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 25, 1988.

[FR Doc. 88–12405 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Not To Review an Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent International CMOS Technology, Inc. on the basis of a consent order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 95) issued by the presiding administrative law judge (ALJ) terminating respondent International CMOS Technology, Inc. (ICT) from the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202–252–1093.

SUPPLEMENTARY INFORMATION: On May 6, 1988, the presiding ALJ issued an ID (Order No. 95) terminating respondent ICT from the investigation on the basis of a consent order. No petitions for review or comments from government agencies or the public were received.

Termination of the investigation as to respondent ICT will further the public interest by conserving Commission resources as well as those of the parties involved.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53.)

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 25, 1988.

[FR Doc. 88–12406 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–281]

Certain Recombinant Erythropoietin; Commission Decision Not To Review an Initial Determination Conditionally Allowing The Upjohn Co. To Intervene as a Respondent in the Second Phase of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination conditionally allowing The Upjohn Company to intervene as a fully participating respondent in the second phase of the investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 10) issued by the presiding administrative law judge (ALJ) conditionally granting in part a motion of The Upjohn Company (Upjohn) to intervene in the above-captioned investigation as a fully participating respondent.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104.

SUPPLEMENTARY INFORMATION: On March 7, 1988, Upjohn filed a motion to intervene in the investigation. Upjohn sought intervention based on a memorandum of intent to form a joint venture with Chugai Pharmaceuticals, Ltd. and Chugai U.S.A. (collectively Chugai), respondents in this investigation. Upjohn asserted that under the joint venture agreement Upjohn would be the exclusive U.S. distributor of Chugai's products. On March 31, 1988, the ALJ denied Upjohn's motion in Order No. 6 because he determined, *inter alia*, that under the memorandum of intent Upjohn's status as an exclusive distributor in the United States of Chugai's product was uncertain and remote.

On April 12, 1988, Upjohn filed a motion for reconsideration of Order No. 6, stating that the ALJ's interpretation of the memorandum of intent was incorrect. Upjohn asserted that its appointment as exclusive distributor of Chugai's recombinant erythropoietin (EPO) in the United States is not uncertain and remote, but in a practical sense completed, and awaits only formalization.

The ALJ's ID conditionally grants in part Upjohn's motion for reconsideration. Under the ID, Upjohn may participate in the economic phase of the investigation only if Upjohn can demonstrate that it has become the exclusive distributor or sub-distributor of Chugai's EPO product by the time that the economic phase of the investigation is scheduled to begin.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: May 20, 1988.

[FR Doc. 88–12407 Filed 6–1–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-282]

Certain Venetian Blind Components; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the United States International Trade Commission on April 28, 1988, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by Hunter Douglas Inc., 2 Park Way and Route 17 South, Upper Saddle River, New Jersey 07458. A supplement to the complaint was filed on May 18, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain venetian blinds components into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1–3 of U.S. Letters Patent 4,235,406; (2) direct infringement of claims 1–4 and 6, and contributory and induced infringement of claim 8 of U.S. Letters Patent 4,245,687; (3) direct infringement of claims 1 and 3–9 and contributory and induced infringement of claims 7–9 of U.S. Letters Patent 4,245,688; (4) direct infringement of claims 1–6, and contributory and induced infringement of claims 3–6 of U.S. Letters Patent 4,352,285; (5) false designation of origin or false description of source and infringement of common law trademark in violation of section 43(a) of the Lanham Act, 15 U.S.C. 1125(a); (6) contributory infringement of federally registered Trademark No. 522,363; (7) contributory infringement of federally registered Trademark No. 1,083,551; (8) contributory infringement of federally registered Trademark No. 1,384,964; and (9) contributory infringement of federally registered Trademark No. 1,385,250, and (10) contributory infringement of common law trademark. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation:

Having considered the complaint, as supplemented, the U.S. International Trade Commission, on May 24, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain venetian blind components into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1–3 of U.S. Letters Patent 4,235,406; (2) direct infringement of claims 1–4 and 6 of U.S. Letters Patent 4,245,687; (3) direct infringement of claims 1 and 3–9 of U.S. Letters Patent 4,245,688; (4) direct infringement of claims 1–6 of U.S. Letters Patent 4,352,285; (5) common law trademark infringement or false representation of source; (6) contributory infringement of federally registered Trademark No. 522,365; or (7) contributory infringement of common law trademark, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Hunter Douglas, Inc., 2 Park Way and Route 17 South, Upper Saddle River, New Jersey 07458.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

W & P Company, 380 Switt Avenue, South San Francisco, California 94080;
A. J. Boyd Industries, Inc., Whitehall Road, Andover, New Jersey 07621;
Vogue Hardware Products, 1322 Bell Avenue, Unit 1–D, Tustin, California 92680.

(c) Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1805.

By order of the Commission.

Issued: May 27, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–12402 Filed 6–1–88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31207]

Florida Crushed Stone Co.; Continuance in Control Exemption; Chemical Lime, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from requirements of 49 U.S.C. 11343 the continuance in control by Florida Crushed Stone Co. of Chemical Lime, Inc. subject to standard labor protection conditions.

DATES: This exemption is effective July 2, 1988. Petitions to stay must be filed by

June 13, 1988, and petitions for reconsideration must be filed by June 22, 1988.

ADDRESSES: Send pleadings referring to Finance Docket No. 31207 to:

(1) Office of the Secretary, Case Control Branch Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Dickson R. Loos, Esq., Holland & Knight, 888 17th St. NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4537/4539 (DC metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

By the Commission.

Noreta R. McGee,

Secretary.

[FR Doc. 88–12359 Filed 6–1–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; Reichhold Chemicals, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 23, 1988, a proposed consent decree in *United States* v. *Reichhold Chemicals, Inc.*, Civil Action No. 88–30168–WS, was lodged with the United States District Court for the Northern District of Florida. The Complaint filed by the United States alleged that defendant Reichhold Chemicals, Inc. generated and arranged for the transportation or disposal of hazardous substances at the Pioneer Sand Company Site; that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint sought injunctive relief to require the defendant to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further sought the reimbursement of $596,486.34, which amount was incurred by the United States in responding to the actual or threatened releases.

The consent decree requires the defendant to implement the remedy selected by the Environmental Protection Agency as set forth in the Record of Decision, dated September 26, 1986, and further requires defendant to pay past costs in the amount of $596,486.34.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Reichhold Chemicals, Inc.*, D.J. Ref. 90–11–2–238.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Florida, 100 N. Palafox Street, Rm. 307, Pensacola, Florida, 32501, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Natural Resouces Division, Department of Justice. P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States* v. *Reichhold Chemicals, Inc.*, D.J. Ref. 90–11–2–238, and enclose a check in the amount of $4.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–12331 Filed 6–1–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act, Susan Bates, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 19, 1988, a proposed Consent Decree in *United States* v. *Susan Bates, Inc.*, Civil Action Number H–86–119 AHN, was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended. Defendent Susan Bates, Inc. owns and operates a knitting needle and crochet hook manufacturing facility in Chester, Connecticut; electroplating processes at the facility involve the generation and disposal of hazardous wastes. Defendant violated the Resource Conservation and Recovery Act and the regulations passed thereunder by, *inter alia*, operating without a final permit to treat, store or dispose of hazardous wastes, failing to comply with applicable financial responsibility requirements, failing to close its land disposal units in accordance with an appropriate closure plan, and failing to implement a comprehensive groundwater monitoring plan.

The Consent Decree provides that the defendant shall pay a civil penalty of $197,287.00 and shall implement a groundwater assessment plan.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Susan Bates, Inc.* D.J. No. 90–7–1–330.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street, and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Susan Bates, Inc.*, D.J. No. 90–7–1–330, and include a check for $3.70 (10 cents

per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-12323 Filed 6-1-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; International Partners in Glass Research

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), International Partners in Glass Research ("IPGR") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, IPGR advised that one of its members, Brockway Research Incorporated, has become a wholly-owned subsidiary of O-I Brockway Glass, Inc., which is an affiliate of Owens-Illinois.

On March 12, 1985, IPGR filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on April 10, 1985, 50 FR 14175. On November 18, 1986, IPGR filed an additional written notification. The Department published a notice in response to this additional notification on January 6, 1987, 52 FR 468.

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 88-12329 Filed 6-1-88; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; National Center for Manufacturing Sciences, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* (the "Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed additional written notifications simultaneously with the Attorney General and the Federal Trade Commission on April 15, 1988 and May 5, 1988 concerning the identities of the members of NCMS and the nature and objectives of NCMS. The additional written notifications were filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The NCMS is a nonprofit public benefit corporation organized under the laws of the State of California. Its principal place of business is at 900 Victors Way, Ann Arbor, Michigan 48108.

On February 20, 1987, the NCMS filed its original notification pursuant to section 6(a) of the Act, in response to which the Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on March 17, 1987, 52 FR 8375.

In its April 15, 1988 notification, the NCMS disclosed that it has further clarified its research agenda to include the areas of production equipment design, analysis, testing and control, manufacturing data and factory control, manufacturing processes and materials, manufacturing operations, information and technology transfer and strategic issues.

The April 15, 1988 notification also disclosed that the following parties had become members of the NCMS:

Airborn, Incorporated
Amphion, Inc.
Aries Technology, Inc.
American Telephone & Telegraph Co.
Automation Intelligence, Inc.
The Bodine Corporation
The Cincinnati Gilbert Machine Tool Company
Consilium, Inc.
Control Technology, Inc.
The Cross Co.
DeVlieg Machine Company
Digital Equipment Corporation
Erie Press Systems (an EFCO Company)
Extrude Hone Corporation
Fabreeka Products Company
Ford Motor Company
Gearhart Industries, Inc.
General Motors Corporation
Gilbert/Commonwealth, Inc. of Michigan
The Gleason Works
Hardinge Brothers, Inc.
Haworth, Inc.
Hougen Manufacturing Company, Inc.
Hufcor, Inc.
S.E. Huffman Corp.
Hurco Companies, Inc.
International Cybernetics Corporation
Kasper Machine Co.
Kayex Spitfire, a unit of General Signal Corporation
Kinefac Corporation
Kingsbury Machine Tool Corp.
H.R. Krueger Machine Tool, Inc.
The M.D. Larkin Company
Len Industries, Inc.
Litton Industrial Automation Systems, Inc.
Manuflex Corporation
Masco Machine, Inc.
Master Chemical Corporation
Mattison Machine Works
Mayday Manufacturing Co.
Measurex Automation Systems, Inc.
Mechanical Technology, Incorporated
Medar, Inc.
Met-Coil Systems Corporation
Microfab Technologies, Inc.
Modern Engineering Service Company
Moore Special Tool Co. Inc.
Murdock Engineering Company
The National Machinery Compmany
Newcor Bay City, Division of Newcor, Inc.
Parker-Majestic, Inc.
Perceptron, Inc.
Plainfield Tool and Enginering, Inc. (d/b/a/ Plaintifled Stamping-Illinois Incorporated)
Radian Corporation
R & B Machine Tool Company
Recognition Equipment Incorporated
RF Monolithics, Inc.
Rockwell International Corporation
Savoir
Sheffield Machine Tool Company
SpeedFam Corporation
Sybase, Inc.
The Taft-Pierce Manufacturing Company
Technology Integration, Inc.
Teledyne Inc.
Texas Instruments Incorporated
Transform Logic Corporation
Turchan Enterprises, Inc.
United Technologies Corporation
The Vulcan Tool Company
Walker Magnetics Group, Inc.
The Warner & Swasey Co.
Weldon Machine Tool, Inc.
Wizdom Systems, Inc.

In its May 5, 1988 notification, the NCMS disclosed that the following additional parties had become members:

Advanced Controls, Inc.
Aircraft Engines Engineering Division, General Electric Company
Raycon Textron, Inc.
Valisys Corporation.

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 88-12330 Filed 6-1-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-54]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on the Next Generation Fighter (NGF).

DATE AND TIME: June 21, 1988, 9 a.m. to 5 p.m., and June 22, 1988, 9 a.m. to 5 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 647, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kirkpatrick, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2803.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. the Ad Hoc Review Team on the Next Generation Fighter, chaired by Mr. William Webb, is comprised of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

TYPE OF MEETING: Open.

Agenda

June 21, 1988

9 a.m.—Opening Remarks.
9:15 a.m.—General Discussion.
1 p.m.—Weapons Briefing.
2 p.m.—NASA Briefing.
3 p.m.—General Discussion.
5 p.m.—Adjourn.

June 22, 1988

9 a.m.—General Discussion.
1 p.m.—General Discussion.
5 p.m.—Adjourn.

May 25, 1988.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 88-12322 Filed 6-1-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts wil be held on June 17, 1988, from 9:00 a.m. — 5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be guidelines and policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12411 Filed 6-1-88; 8:45 am]

BILLING CODE 7537-01-M

Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Local Programs Section) to the National Council on the Arts will be held on June 16, 1988, from 9:00 a.m.—5:30 p.m. and on June 17, 1988, from 9:00 a.m.—5:00 p.m., in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on June 16, 1988, from 9:00 a.m.—12:00 noon, for a guidelines and policy issues discussion.

The remaining sessions of this meeting on June 16, 1988, from 1:30 p.m.—5:30 p.m. and on June 17, 1988, from 9:00 a.m.—5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9) (b) of 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-12412 Filed 6-1-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corp. Draft Supplement 3 to the Programmatic Environmental Impact Statement Related to TMI-2 Cleanup; Extension of Comment Period

On April 27, 1988, a Notice of Availability of Draft Supplement 3 to the Programmatic Environmental Impact Statement on the TMI-2 Cleanup was published in the Federal Register (53 FR 15160). The Notice stated that comments on the Draft Supplement must be received before June 15, 1988. Since several interested persons, as well as the Commission Advisory Panel for the Decontamination of Three Mile Island Unit 2, have requested an extension, the NRC is hereby extending the comment period for this Draft Supplement until August 1, 1988.

Comments should be forwarded to Dr. Michael T. Masnik, Project Directorate 1-4, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 25th day of May 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12353 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

The amendments would revise the Technical Specifications (TS) of the operating licenses to update the LOCA—Limited Maximum Allowable Linear Heat Rate, (Figure 3.5.2-16) to reflect the B&W Owners Group Topical Report, BAW-2001P, "Low Pre-Pressure Fuel Road Program." BAW-2001P presents the results of a series of analyses concerning low pre-pressure fuel rods. These fuel rods are the standard Mark-B design in which the pre-pressure (fill gas pressure) has been reduced. This reduction will extend burnup capabilities. The overall burnup limit would be extended by 4,000 MWD/MTU. LOCA margins were improved enough that the two-foot core elevation peak power limit can be raised from 14.0 to 14.5 KW/ft for the generic lowered loop configuration plant. BAW-2001P is currently under staff review.

Changes in the LOCA margin were evaluated by analyzing the most restrictive LOCA case. This is the peak power at the two-foot level of core elevation at beginning-of-life (BOC) conditions. This analysis performed generically for the lowered-loop configuration plants has resulted in an LHR of 14.0 KW/ft for the standard Mark-B design. When redone for the reduced pre-pressure design, this analysis verified that a limit of 14.5 KW/ft was achievable. Power histories used in both types of analyses were more realistic (i.e. less conservative) than those used previously for similar studies. This analysis has been reported to result in an LHR of 14.0 KW/ft with a peak cladding temperature in conformance with the acceptance criteria of 10 CFR Part 50.46.

The design change of some psi reduction in the fuel rod pre-pressure will result in a reduction to the internal pin pressure during plant operation. A two-fold effect will be realized; the reduced internal pin pressure will: (1) Allow for longer burnup periods (fuel cycles), and (2) delay rupture during a LOCA. A preliminary evaluation indicated that the pin pre-pressure reduction would delay rupture by a time increment, equal to a rise in the LHR of 0.5 KW/ft. There are direct relationships between the LHR (fuel stored energy), the internal pin pressure, the cladding rupture time and the cladding temperature response. An increase in the LHR will shorten the time to rupture, thereby increasing the peak cladding temperature. A decrease in internal pin pressure lengthens the time to rupture, effective decreasing the peak cladding temperature. Therefore, the reduced pin pressure design should allow for an increase in the LHR while maintaining acceptable cladding temperature results. The LOCA analysis, therefore, utilized a LHR of 14.5 KW/ft as compared to the 14.0 KW/ft current generic LOCA limit at the two-foot core elevation. This analysis is described in the Topical Report.

The proposed revisions are in accordance with the licensee's application dated January 22, 1988. The licensee states that this application supplements the June 1, 1987 submittal. However, the staff considers the two applications to deal with separate issues and is reviewing them separately. The June 1, 1987 letter proposed to update Figure 3.5.2.-16 to reflect NUREG-0630, "Cladding Swelling and Rupture Models for LOCA Analysis" and BAW-1915P, "Bounding Analytical Assessment of NUREG-0630 Models of LOCA KW/ft Limits With Use of FLECSET."

By July 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement whcih satisfies these requirements with respect to at least one contention wil not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW.,

Washington, DC, by the above date. Where petitions are filed during the last ten (10) days for the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Unit at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification number 3737 and the following message addressed to David B. Matthews, Director, Project Directorate II–3 (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of the **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry III, Bishop, Lieberman, Cook, Purcell and Reynolds, 1200 17th Street, NW. Washington, DC 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a futher notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated January 22, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 25th day of May 1988.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3 Division of Reactor Projects—I/II.

[FR Doc. 88–12354 Filed 6–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–250–OLA–2 & 50–251–OLA–2]

Florida Power and Light Co., (Turkey Point Plant, Units 3 and 4); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this spent fuel pool expansion proceeding:

Alan S. Rosenthal, Chairman
Christine N. Kohl
Howard A. Wilber

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: May 26, 1988.

[FR Doc. 88–12397 Filed 6–1–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Kansas Gas and Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Kansas Gas and Electric Company, Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc., (the licensees), for operation of the Wolf Creek Generating Station, Unit No. 1 located in Coffey County, Kansas.

The amendment would revise Technical Specifications 5.3.1 and 5.6.1.1 to allow storage of fuel assemblies of up to 4.5 weight percent U–235 which is an increase from the current limit of 3.5 weight percent U–235. Technical Specification 5.6.1.1 is also being revised to reflect the actual spent fuel pool storage rack nominal cell pitch of 9.236 inches. In addition, the Acceptable/Unacceptable regions of Figure 5.6–1 and Figure 3.9–1 are being changed on the Burnup versus Enrichment graphs to reflect the higher possible enrichments.

The amendment would be in response to the licensees' February 26, 1988 submittal and is needed before the licensees would be allowed to store the 4.5 weight percent U–235 fuel in the Wolf Creek spent fuel storage pool. Due to a misunderstanding on the part of the NRC staff regarding the licensees' earliest date for receipt of fuel on site, insufficient time now exists for the Commission's usual 30-day notice. The delay that would result from issuing the 30-day notice would cause the licensees to store the 4.5 weight percent U–235 fuel in the new fuel storage facility on an interim basis until the 30-day notice period expires and then move the fuel assemblies to the spent fuel pool for transfer to the fuel transfer system for underwater transfer to the refueling pool in the reactor building. The interim storage of the new fuel assemblies in the new fuel storage facility pending the expiration of the 30-day notice would result in a series of unnecessary and duplicative fuel movements that do not increase the safety of the process and may expose the fuel assemblies to the possibility of mechanical damage due to the extra transfer movements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. An increase to a maximum enrichment of 4.5 weight percent for the spent fuel and new fuel storage pools does not involve a significant increase in the probability or consequence of an accident or other adverse conditions over previous evaluations. The small increase in fuel enrichment has only a very minimal effect on the fuel handling accidents described in the Updated Safety Analysis Report. Because of the conservative techniques and assumptions used to evaluate the maximum possible neutron multiplication factor, there is more than reasonable assurance that no significant hazards considerations are involved in storing fuel assemblies of up to and

including 4.5 weight percent in the fuel storage racks under both normal and postulated accident conditions.

For example, ignoring the 2,000 ppm soluble boron in the spent fuel pool calculations results in conservative values of the multiplication factor. Storing fresh fuel in Region 1 configuration at an enrichment of 4.5 weight percent would result in a maximum multiplication factor of 0.9472 including all uncertainties. Adherence to the curves generated for Figure 3.9–1 in the new Technical Specifications would assure fuel storage in Region 2 to be at or below the limit of 0.9150 multiplication factor (including uncertainties and additional margins).

In the extreme case of loading Region 2 with fresh 4.5 weight percent fuel for example, and taking credit for 2,000 ppm soluble boron results in a maximum multiplication factor of 0.9408. In all cases, the values of multiplication factor are below the required limit of 0.95.

The spent fuel pool storage rack nominal cell pitch is being revised to reflect actual dimensions as shown on design drawings. The analysis provided was performed using a value of 9.235 inches for nominal cell pitch.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. An increase to a maximum enrichment level of 4.5 weight percent does not create the possibility of a new or different kind of accident nor condition from previous evaluations. An increase in the enrichment level to 4.5 weight percent from 3.5 weight percent involved extending the previous evaluations to cover more realistic situations. The same calculational techniques and computer codes were used. The proposed amendment does not alter the configuration of the plant or the way in which it is operated.

(3) This proposed amendment does not involve a significant reduction in a margin to safety. An increase in the maximum enrichment to 4.5 weight percent does not involve a significant reduction in a margin of safety. As discussed above, in all cases the multiplication factors for worst case approximations fall considerably below the regulatory limit and do not represent significant reductions in a margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

This Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and should cite the publication date and page number of the Federal Register notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an apppropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves significant hazards considerations, any hearing

held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland, this 25th day of May, 1988.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88-12355 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275 and 50-323]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-80 and DPR-82, issued to the Pacific Gas and Electric Company (PG&E or the licensee) for operation of the Diablo Canyon Nuclear Power Plant (DCPP) Units 1 and 2 located in San Luis Obispo County, California.

The amendments would revise the technical specifications (TS) relating to section 6.0, Administrative Controls, by removing the organization charts and changing the titles of certain management personnel. The proposed amendments were requested by the licensee's letter of May 20, 1988.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. These three criteria are discussed in detail below.

(1) The NRC staff proposes to determine that the proposed amendments do not involve a significant increase in the probability of consequences of an accident previously evaluated because title changes and removal of the organization charts from the technical specifications are administrative in nature and do not affect plant operations or the number of members, composition, or function of the Plant Staff Review Committee. As in the past, the NRC will continue to be informed of organizational changes through other required controls. 10 CFR 50.34(b)(5)(i) requires that the applicant's organizational structure be included in the Final Safety Analysis Report (FSAR).

Chapter 13 of the DCPP FSAR Update provides a description of the organization and detailed organization charts. The organization charts in the FSAR Update are more detailed than those presently in the technical specifications. As required by 10 CFR 50.71(e), the licensee submits annual revisions to the FSAR Update.

(2) The NRC staff proposes to determine that the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no physical alternation to any plant system, nor is there a change in the method in which any safety related system performs its function. The proposed changes are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The NRC staff proposes to determine that because the proposed revision is administrative in nature, it therefore will not reduce any margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland

from 8:15 a.m. to 5:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 1, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing or petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issuance the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 20, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 26 day of May, 1988.

For the Nuclear Regulatory Commission.

Harry Rood,

Senior Project Manager, Project Directorate V, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-12356 Filed 6-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 58 to Facility Operating License No. NPF-21, issued to Washington Public Power Supply System (the licensee), which revised the Technical Specifications for operation of the Nuclear Project No. 2 (WNP-2), located in Benton, County, Washington.

The amendment was effective as of the date of issuance.

The amendment revised Technical Specification Table 3.6.3–1, "Primary Containment Isolation Valves," and Table 3.3.2–1, "Isolation Actuation Instrumentation" to allow operation of WNP–2 with automatic isolation controls for valve RHR–V–8 bypassed when control of this value is transferred to the Alternate Remote Shutdown Panel and the value is locked in the isolated position.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on March 14, 1988 (53 FR 8291). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 5, 1988 and supplemental letters dated February 12 and March 15, 1988, (2) Amendment No. 58 to License No. NPF–21, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. The application submitted on January 12 requested the amendment to allow operation with control of the value transferred to the Alternate Remote Shutdown Panel (ARSP), bypassing the isolation signals and interlocks. The supplement to the application submitted on February 12 set forth more explicitly which isolation signals and interlocks are bypassed when control of the valve is transferred to the ARSP. That supplement also set forth compensatory measures which would be taken to preclude inadvertent opening of the valve from the ARSP. The supplement submitted on March 15 revised the proposed wording to the technical specifications to make it clear that the isolation signals and interlocks would be reestablished when control of the valve is transferred back to the control room. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Richland City Library, Swift and Northgage Streets, Richland, Washington 99352. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 26th day of May 1988.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–12357 Filed 6–1–88; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25738; File Nos. SR–AMEX–87–13, CBOE–87–27, and Phlx–87–32]

Self-Regulatory Organizations; American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., and Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Changes

On June 1, June 24, and September 24, 1987, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"),[1] and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] proposed rule changes to provide for a two-year pilot program during which certain hedged positions will be exempt from equity options position and exercise limits.[4]

The proposed rule changes were noticed in Securities Exchange Act Releases No. 24669 (July 1, 1987), 24701 (July 14, 1987), and 24971 (September 30, 1987), 52 FR 26108 (July 10, 1987), 52 FR 27269 (July 20, 1987), and 52 FR 37563 (October 7, 1987), respectively. No comments were received by the Commission on the proposed rule changes.

I. Introduction

The purpose of the proposed rule changes is to increase position and exercise limits for stock options by creating a limited exemption for the four most commonly used hedged positions. The current Amex, CBOE, and Phlx position limit rules circumscribe the number of option contracts on the same side of the market (*i.e.*, short calls and long puts or long calls and short puts) that an investor may control. Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,500, or 8,000 contracts) based on the number of shares of the underlying security outstanding and/or the underlying security's trading volume.[5] Exercise limits correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, only the number of option contracts set forth as the position limit.[6]

During the two-year pilot program, the proposals will allow an automatic exemption from equity option position and exercise limits for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract). The four hedged positions, which combine stock and options on a one-for-one basis, are: long stock and short call; long stock and long put; short stock and long call; and short stock and short put. Under the proposal, the maximum position limit (including the allowed exemptions) may not exceed twice the present position limit.

The proposal contemplates that exercise limits will correspond to position limits. Therefore, investors will be allowed to exercise, during any five consecutive business days, the same

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[1] On September 4 and September 10, 1987, respectively, the Amex and CBOE filed Amendment No. 1 to their proposals clarifying the situation where an options contract has been adjusted to reflect a stock distribution, stock split, or stock dividend. In such a case, each option contract must be hedged by the same number of shares represented by the adjusted option contract. *See* letter from Claire P. McGrath, Staff Attorney, Amex, to Joseph Furey, Esq., Branch of Options Regulation, Commission, dated September 3, 1987; letter from Nancy R. Crossman, Associate General Counsel, CBOE, to Joseph Furey, Esq., Division of Market Regulation, Commission, dated September 10, 1987. The Phlx addressed this situation in its original proposal.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b–4 (1987).

[4] Position limits impose a ceiling on the number of options contracts of each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days.

[5] *See* Amex Rule 904, CBOE Rule 4.11, and Phlx Rule 1001.

[6] *See* Amex Rule 905, CBOE Rule 4.12, and Phlx rule 1002.

number of contracts set forth as the position limit for that option, including those that are hedged (*i.e.*, if the position limit for an option is 5,500 contracts and an investor has established a hedged position of 6,500 contracts, the investor could exercise all 6,500 option contracts during any five consecutive business days).

In their rule filings, the exchanges stated that the proposed rule change is a response to requests by institutional investors for the ability to hedge greater amounts of stock holdings than they can under the current position limit rule. The CBOE notes that in some instances it has been necessary to grant market participants exemptions for existing equity option position limits. The proposed exemptions for long stock positions will provide investors the ability to protect or hedge twice as many shares of stock as they can under the current position limit rule with long puts or short calls. Similarly, the proposed hedged exemption for short stock positions will permit investors to offset such positions with either long calls or short puts. If either of these options positions is exercised, the shares of stock acquired or sold pursuant to the exercise will reduce the stock position and, therefore, will not add to the investor's total position in the underlying stock.

II. Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market.[7] In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

The Commission previously has indicated that, in establishing position and exercise limits, it has attempted to balance two competing concerns. On the one hand, limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options disproportionate to the deliverable supply and average trading volume of the underlying security. On the other hand, limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[9]

In 1978, the Report of the Special Study of the Options Market, while recognizing the important functions served by position and exercise limit rules, set forth some of the deleterious effects of the 1,000-contract position and exercise limits then in effect.[10] In particular, the *Options Study* suggested that position limit rules by completely reviewed and their future elimination or relaxation, particularly for hedged positions, be considered.[11]

In October 1980, The Commission approved proposed rule changes by the CBOE, the Amex, the Phlx, and the Pacific Stock Exchange, Inc. to increase position and exercise limits from 1,000 to 2,000 contracts for all options classes.[12] In July 1983, the Commission approved a further increase in position and exercise limits for individual stock options based on a tiering approach.[13] Limits for options on stocks with the greatest trading volume and public float were increased to 4,000 contracts and limits on all other options classes were increased to 2,500 contracts. In approving the increased limits under a two-tiered approach, the Commission recognized that securities with active and deep trading markets, as well as broad public ownership, are more difficult to disrupt than securities having less active and deep markets and having smaller public floats. Accordingly, the Commission believed that the tiering approach to position and exercise limits was appropriate because it would increase the depth and liquidity of the stock options markets without significantly increasing concerns regarding manipulation and disruption of the market for the underlying securities. The Commission noted that the absence of discernible manipulation problems under the current limits was an indication that modest additional increases were justified. In addition, the Commission noted that tiering was consistent with the gradual evolutionary approach that the Commission and the options exchanges have adopted in increasing position and exercise limits.

In April 1985, the Commission approved a three-tier structure that established position and exercise limits of either 3,000, 5,500, or 8,000 contracts for individual stock options depending on certain criteria related to the trading volume and the number of shares outstanding of the underlying stock.[14] In approving the proposals, the Commission concluded that the proposed increases, based on a three-tiered approach, would further increase the potential depth and liquidity of the individual stock options market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or underlying securities. The Commission noted, as it previously had noted in its 1983 Release, that securities with active and deep trading markets, as well as broad public ownership, are more difficult to manipulate or disrupt than those securities that are less active with smaller public floats. In this connection, the Commission believed, in particular, that the proposal to create a third tier, with a limit of 8,000 contracts, for options on the most actively traded, widely held securities, permitted the Commission to avoid placing unnecessary retraints on those options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, likely would be the greatest. The Commission noted the absence of discernible manipulation or disruption problems under the two-

[7] A mini-manipulation is conducted by effecting transactions in the underlying security to profit a previously established options position (*e.g.*, purchasing stock to increase its price and, as a result, the value of call options), and then closing out the options position at a profit. Because of the substantial leverage provided by options contracts, a trader would be capable of accumulating a large enough position to result in substantial profit from relatively small movements in the price of the underlying stock. Corners and squeezes could involve the purchase of call options at a time when the option holder also has a substantial or even controlling interest in the underlying securities. The options would then be exercised, forcing uncovered options writers assigned to deliver stock on the exercises to buy the stock at increasingly higher prices because of the unavailability of the stock. The person effecting the corner or squeeze would profit either by closing out his options position at a premium or selling the underlying securities at inflated prices.

[8] Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440 (approving three-tiered position and exercise limits for individual stock options).

[9] *Id.*

[10] H.R. Rep. No. 1FC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978) ("Options Study").

[11] The *Options Study* pointed out that, under rules promulgated by the Commodity Futures Trading Commission ("CFTC"), positions that are deemed to be bona fide hedging transactions (as defined) are exempted from position limit rules.

[12] Securities Exchange Act Release No. 17237 (October 22, 1980), 45 FR 71453.

[13] Securities Exchange Act Release No. 19975 (July 15, 1983), 48 FR 22289 ("1983 Release").

[14] Securities Exchange Act Release No. 21907 (April 3, 1985), 50 FR 13440.

tiered limits in concluding that the proposed increases were warranted.

III. Discussion

The Commission has concluded that the CBOE, Amex, and Phlx proposals to increase position limits for individual equity options in circumstances where those excess positions are hedged fully with offsetting stock positions will further increase the depth and liquidity of the stock options market without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market. In particular, the Commission believes that the proposals will provide greater depth and liquidity to institutional customers seeking to hedge stock portfolios by trading stock options. These investors will be able to hedge twice the amount of underlying shares of stock than they currently can, and thus will be better able to protect their large stock portfolios from market declines.

The Commission also believes that the Amex, CBOE, and Phlx proposals are consistent with the Commission's general approach to position and exercise limits. That approach balances the benefits derived from increased position and exercise limits against the potential for increased market disruptions and manipulations. The Commission does not believe that the exemption from position and exercise limits will disrupt the options or equity markets or substantially increase the possibility of manipulation in the underlying stocks or options. In this regard, the Commission notes that the position and exercise limit exemption is a limited one (*i.e.*, the exemption is limited to accounts that have established one of four hedged positions). Moreover, because any option positions in excess of current position limits must be hedged fully, market disruption concerns are lessened. In situations where the option position is hedged fully with an offsetting stock position, potential disruptions in the underlying stock market are lessened because the entity with the options position is not required to enter the market to buy or sell the stock if the options are exercised or assigned. In addition, the Commission believes that a maximum position of double the existing position and exercise limits will help to ensure that any potential market disruptions are minimal. Finally, to the extent that an options position is hedged fully with stock, it is more difficult to profit from an intermarket manipulation because an increase in the value of the options position usually will be accompanied by a corresponding decrease in the value of the stock position.

Nevertheless, larger options positions do raise the incentive to engage in intermarket manipulations by providing a greater potential gain from the derivative position. This is especially relevant to the CBOE, Amex and Phlx proposals in that the hedge exemptions will be available to market professionals. In this regard, the Commission is confident that Amex, CBOE, and Phlx surveillance capabilities are sufficient to detect and deter trading abuses arising from the increased position and exercise limits. Each exchange generates daily an automated position limit report. If an entity is identified as exceeding the existing position limit in a specific security, the surveillance staff will discern immediately whether an offsetting stock position exists. If the excess options position is not hedged fully on a one-to-one basis, the entity loses the exemption, will be precluded from effecting additional opening transactions, and will be required to close out those positions in excess of the current position limit. In addition, the exchanges can proceed with whatever disciplinary action is appropriate under their rules. The Amex, CBOE, and Phlx also have noted that their surveillance departments will cross reference their position limit reports with their manipulation reviews to ensure that any unusual options or stock trading, whether fully hedged or not, will be identified and investigated thoroughly.[15] In addition, the exchanges have indicated that any excess option positions must be liquidated prior to or contemporaneously with a decrease in the hedged stock position or a violation of position limits will be deemed to have occurred.[16] The Commission also notes that the exchanges have proposed a two-year pilot program for the equity option hedge exemption. During the two-year pilot the exchanges and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[17]

The Commission also notes that there does not appear to be any regulatory reason to differentiate among the three tiers of current position and exemption is concerned. Although the position and exercise limits for options in the lowest two tiers are based on securities with a lower number of outstanding shares and/or with a lower trading volume, all securities underlying options contracts traded on the Amex, the CBOE or the Phlx must meet certain minimum outstanding share and trading volume criteria.[18] Because any position in excess of the existing limit on the same side of the market must be hedged fully by an offsetting stock position, market disruptions, regardless of differences in the trading of the underlying stock, would be unlikely, and profits derived from one position would be offset by losses associated with the other position. The Commission believes, therefore, that so long as there is significant trading volume and adequate public interest in the security to permit options trading, it is appropriate to allow an exemption from position and exercise limits for accounts that have established one of the four hedged positions with options that have a current 3,000, 5,500, or 8,000 contract position limit.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules

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[15] Letter from Nancy R. Crossman, Associate General Counsel, CBOE, to Joseph Furey, Esq., Division of Market Regulation, Commission, dated September 10, 1987; letter from Claire P. McGrath, Staff Attorney, Amex, to Joseph Furey, Esq., Branch of Options Regulation, Commission, dated September 3, 1987; telephone conversation between Howard Baker, Senior Vice President, Options Division, Amex, and Joe Furey, Branch Chief, Division of Market Regulation, Commission, October 6, 1987; telephone conversation between Michele Berkowitz, Staff Counsel, Phlx, and Mary Revell, Attorney, Commission, May 4, 1988.

[16] *See* letter from Nancy Crossman, Associate General Counsel, CBOE, to Joseph Furey, Branch Chief, Division of Market Regulation, Commission, dated October 9, 1987; letter from Claire P. McGrath, Staff Attorney, Amex, to Joseph Furey, Branch Chief, Division of Market Regulation, Commission, dated October 9, 1987; and telephone conversation between Michele Berkowitz, Staff Counsel, Phlx, and Mary Revell, Attorney, Commission, May 4, 1988. In this regard, the CBOE, Amex, and Phlx will conduct surveillance to detect any such violations.

[17] The Commission expects the exchanges to determine from their monitoring programs information including, but not limited to, the following: the investors who use the exemption; how often the exemption is used; the stock positions hedged; the amount and timing of trading in the stock by the investor while he is using the exemption; the options used to hedge the stock positions; and the size (number of contracts) of the options positions held pursuant to the exemption. The exchanges also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

[18] Generally, these requirements are: (1) A minimum of 6,000 holders of record; (2) a minimum of 7,000,000 shares outstanding; (3) trading volume of at least 2,400,000 shares in the preceding 12 months; and (4) a minimum value of $10 per share for the underlying stock. *See* Amex Rule 915: Criteria for Underlying Stocks; CBOE Rule 5.3: Approval of Underlying Securities; and Phlx Rule 1009.

and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, [19] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [20] that the proposed rule changes are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Dated: May 24, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12428 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-25739; File No. SR-CBOE-87-25)

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On May 27, 1987, the Chicago Board Option Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for a one year pilot program during which public customers may apply for a "hedge exemption" from broad-based index option position limits.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 24603 (June 17, 1987), 52 FR 23731 (June 24, 1987). No written comments were received by the Commission on the proposed rule change.

I. Introduction

The purpose of the proposal is to provide public customers who wish to hedge large stock portfolios relief from existing broad-based stock index option position limits. The CBOE believes that the existing limits are not sufficient to hedge the portfolios of large institutional investors. For example, under the current index option position limit of 25,000 contracts [4] in the CBOE's Standard and Poor's 100 Index option ("OEX"), if the value of OEX is 248, a position at the limit would have an index value of $620 million. Many portfolio managers, however, handle stock portfolios valued far in excess of that size. OEX can not be used effectively by those managers to hedge their portfolios. Rather, they must be index futures contracts, where larger position limits and various exemptions to positions limits exist.

The CBOE proposed rule change provides for a one year pilot program during which public customers may request Exchange approval for a "hedge exemption" from position limits on broad-based index options traded on the CBOE. The exemption is designed for customer portfolio management and thus is limited to public customers, *i.e.*, those customers whose trades would be eligible for placement on the public limit order book under CBOE Rule 7.4.

Under the proposal, the Exchange may exempt from its position limits any positions in broad-based index options traded on the Exchange that are hedged against qualified long portfolios of stock. Such options positions would be comprised of short calls or long puts, combinations thereof, or such equivalent positions as are approved in advance by the Exchange. To be qualified, a short portfolio must at all times be composed of net long positions in common stocks in at least four industry groups and contain at least 20 stocks, none of which accounts for more than 15% of the value of the portfolio. The maximum size of the exempt position cannot exceed the unhedged value of the qualified stock portfolio, and no position can exceed 75,000 contracts, regardless of the size of the stock portfolio. The unhedged value is determined by totalling the values of the net long positions for each of the stocks of the qualified portfolio and subtracting the value of any short calls and long puts in any broad-based index options, any short positions in stock index futures or options on such futures, and any economically equivalent positions in stock index options or futures.[5]

The index options hedge exemption may not be used for arbitrage in stock baskets and overlying stock index options. In addition, the hedge exemption customer will commit to initiation and liquidation of options and stock positions in an orderly fashion and in a manner calculated not to cause unreasonable fluctuations or price changes, and to liquidation of options positions that would be rendered excessive by a decrease in the hedged value of the qualified portfolio prior to or comtemporaneously with a decrease in the qualified portfolio's hedged value. The customer also will commit to provide promptly to the Exchange all pertinent information concerning the customer's stock portfolio, any stock index futures positions, and current hedged and aggregate options positions and to notify the Exchange promptly of material changes in stock portfolio or futures positons. The customer must also abide by prevailing exercise limits, without regard to the hedge exemption provision, except in expiring series from the last business day prior to expiration until expiration.[6] Accordingly, no more than 15,000 contracts in OEX or CBOE's Standard and Poor's 500 Index Option ("SPX") may be exercised over any five day period, except in expiring series on the business day prior to expiration. Exercise limits on expiration will not be restricted in order to allow index option hedge exemption customers who hold expiring positions to roll their hedge positions into forward months without affecting their stock positions.[7] Any violation of the hedge exemption provisions may result in the customer losing its exemption, and, if warranted, in disciplinary action against a member that aided or abetted the violation.

II. Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits for stock index options

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[19] 15 U.S.C. 78f (1982).

[20] 15 U.S.C. 78s(b)(2) (1982).

[21] 17 CFR 200.30-3(a)(12) (1987).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] Position limits impose a ceiling on the number of option contracts of the same class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

[4] The CBOE's proposal to increase position limits for broad-based index options from 15,000 contracts to 25,000 contracts, with no more than 15,000 contracts to be held in the near-term, expiring month, was approved by the Commission in Securities Exchange Act Release No. 24556 (June 5, 1987), 52 FR 22695.

[5] The proposed rule also requires the options hedge position to be held in an account of a member of the Exchange, which account must comply with all rules and regulations of the Exchange. Requiring that the positions clear into an approved hedge account carried at a member firm will assure that the Exchange has the ability to conduct adequate surveillance of exempt positions.

[6] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days.

[7] Letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated August 25, 1987.

are designed to minimize the potential for mini-manipulations,[8] and serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

The Commission previously has indicated that, in establishing position and exercise limits, it is necessary to balance two competing concerns. On the one hand, limits must be sufficiently low to prevent investors from disrupting the market for the underlying security. On the other hand, limits must not be established at levels that are so low as to discourage unnecessarily participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[10]

III. Discussion

The Commission has concluded that the proposed hedge exemption from broad-based index option position limits will allow more effective hedging of large stock portfolios and may increase the depth and liquidity of the stock index options market. At the same time, the Commission does not believe that allowing a public customer hedge exemption from broad-based index option position limits to the level proposed by the CBOE will increase substantially these products' susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities.

As noted above, because OEX and SPX are cash settled and comprised of a large number of securities, they are not as likely to disrupt the markets in their underlying securities or be as readily susceptible to manipulation as individual options.[11]

In addition, the CBOE proposal has additional safeguards that will make it difficult to use the exempted positions to disrupt or manipulate the market. In this regard, the qualified stock portfolio must be broad-based, and correspond in value to the value of the options hedge so that the increased positions could not be used in a leveraged manner in any type of manipulative scheme. Both the options and stock positions must be initiated and liquidated in an orderly manner. The requirement that a reduction in the options position must occur at or before the corresponding reduction in the stock portfolio position should ensure that the stock transactions are not used to impact the market so as to benefit the options positions. Moreover, because the exemption may not be used for arbitrage in stock baskets and overlying stock index options, the proposed exemption will not aggravate stock market volatility.[12]

To the extent any potential for manipulation or disruption might increase because of the higher limits, the Commission believes the Exchange's surveillance procedures will be adequate to detect as well as deter such activity. In particular, the CBOE will monitor a hedge exemption customer's options position daily to determine if the position is being maintained within the allowable limits.[13] The daily establishment and liquidation of options hedge positions also will be monitored to detect apparent rule violations (*e.g.*, mini-manipulation, frontrunning). For index option surveillance, on the Wednesday prior to expiration the firm carrying the customer's position will be required to telefax data to the Exchange regarding the status of the account's portfolio (*i.e.*, the current option position, futures position, options on futures position, and any changes made to the stock portfolio since the filing of the application for exemption from index option position limits and/or the last update). Although exercise limits on expiration will not be restricted, exercises in excess of 15,000 contracts by holders of hedge exemptions will be closely examined, as will any related activity in equity securities.[14] In the event that the holder of a hedge exemption exercises in excess of 15,000 contracts on expiration and liquidates a substantial amount of stock on the last trading day prior to expiration, the CBOE will presume that the hedge exemption holder violated subsection (g)(2) of the proposed rule for failing to liquidate options and stock positions in an orderly fashion or in a manner not calculated to cause unreasonable price fluctuations or unwarranted price changes or for engaging in stock index arbitrage, which is specifically prohibited by the proposal.[15] The holder, of course, will be provided an opportunity to rebut the presumption.[16] A finding, however, that a violation of the rule has occurred will result in revocation of the hedge exemption.

The Commission believes that the CBOE's surveillance procedures will enable the Exchange to detect unusual selling by a hedge exemption customer, and then take steps to withdraw the exemption if violations are found. The Commission also notes that the Exchange has proposed a one year pilot program for customers to apply for the hedge exemption. During the one year pilot the Exchange and the Commission can monitor the effects of the hedge exemption on the market to ensure that problems have not arisen due to the increased position and exercise limits.[17]

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[8] A mini-manipulation is conducted by effecting the transactions in the underlying security to profit a previously established options position (*e.g.*, purchasing stock to increase its price and, as a result, the value of call options), and then closing out the options position at a profit. Because of the substantial leverage provided by options contracts, a trader would be capable of accumulating a large enough position to result in substantial profit from relatively small movements in the price of the underlying stock.

[9] Securities Exchange Act Release No. 21907 (March 29, 1985), 50 FR 13440 (approving three-tiered position and exercise limits for individual stock options).

[10] *Id.*

[11] Under rules promulgated by the Commodity Futures Trading Commission ("CFTC"), futures positions that are deemed to be bona fide hedging transactions (as defined) are exempted from position limit rules. Largely because of hedging exemptions in the futures markets, institutions are able to offset much larger equity positions using index futures products than they currently might using index options. The increased position limits should provide institutions with a broader choice in their use of index products. Commodity Exchange Act, section 4a, 7 U.S.C. 6a (1982) (bona fide hedging transactions exception to position limits); CFTC Rule 1.3(z), 17 CFR 1.3(z) (1986) (definition of bona fide hedging transaction). *See also* CFTC Rule 1.61, 17 CFR 1.61 (1986) (Speculative Position Limits).

[12] The stock market has experienced short term volatility related to the establishment and unwinding of stock-index arbitrage positions, both at quarterly expirations when index options, futures, and individual options expire simultaneously (so-called "triple-witching" expirations) and also on certain non-expiration days. *See* SEC Division of Market Regulation's Report on the October 1987 Market Break (February 1988 ("Market Break Report"), at 1–7 to 1–10 and 3–17. The CBOE's proposed rule specifically provides that the hedge exemption may not be used for stock-index arbitrage.

[13] *See* letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Mary Revell, Attorney, Division of Market Regulation, Commission, dated June 25, 1987 (Surveillance Procedures for OEX and SPX Customer Hedge Exemptions).

[14] Letter from Frederic H. Krieger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated August 25, 1987.

[15] *Id.*

[16] *Id.*

[17] The Commission expects the CBOE to determine from the monitoring program information including, but not limited to, the following: the persons who use the exemption; how often the exemption is used; the size (dollar value) of any portfolios hedged; the number of stocks represented in these portfolios and the quantity of each stock held; positions held by the portfolios in stock index futures, stock index options on futures, or any other stock index option contracts; and the size (number of contracts) of the index options positions held pursuant to the exemption. The CBOE also should inform the Commission of the results of any surveillance investigations undertaken for apparent violations of any of the provisions of the hedge exemption rule.

The Commission believes that the CBOE proposal is a viable approach to allowing more efficient hedging of large stock portfolios. The Commission further believes the proposal will increase the depth and liquidity of index option trading and will better accommodate the hedging needs of portfolio managers.

Since the introduction of index-related derivative products, their use by institutions as hedging vehicles has increased substantially. Index products allow institutions to hedge the risks associated with holding diversified equity portfolios. Currently, some institutions utilize a variety of index option products and strategies, such as the purchase of protective index puts, to hedge diversified equity portfolio (market) risk.[18] Institutions, however, are generally constrained in their ability to hedge large portfolios with index options by current position limits.[19] As a result, many utilize financially equivalent index futures products to the competitive disadvantages of the options exchanges.[20] In addition, many institutions attempted to implement various dynamic hedging strategies [21] (*e.g.*, portfolio insurance) with stock index futures during the October 1987 market break, which placed enormous liquidity demands on the markets.[22] The public customer hedge exemption proposed by the CBOE should provide institutions with an alternative to various dynamic hedging strategies that does not require purchases during volatile market periods and that may be less disruptive to the equity markets.[23]

[18] A protective put strategy entails purchasing index puts as a hedge against a diversified long equity position. In a declining market, the risk of losses in the equities may be offset by purchasing put options which increase in cash value as the overall market declines.

[19] *See* Siler, The Crisis of Confidence in Options, *N.Y. Times*, April 24, 1988, at F1.

[20] Largely because of hedging exemptions in the futures markets, institutions are able to offset much larger equity positions there than they currently might using index options. There are, however, a variety of reasons unrelated to position limits, such as lower transaction and market impact costs, that may account for institutions utilizing index futures products as hedging vehicles more extensively than they use index options.

[21] Dynamic hedging involves rebalancing a market portfolio to increase or decrease the proportion of equity exposure depending on market movements.

[22] *See* the Division of Market Regulation's Market Break Report at 3-12—3-16. *See also* Stanley Shopkorn, speech delivered at Trading on the Future, a Center for National Policy Symposium (Mar. 8, 1988).

[23] *See* S. Grossman, An Analysis of the Implications for Stock and Future Price Volatility of Program Trading and Dynamic Hedging Strategies (Working Paper, CSFM-#158, June 1987).

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[24] and the rules and regulations thereunder. The Commission believes that the CBOE proposal strikes an appropriate balance between the needs of market participants and the regulatory purposes position and exercise limits are designed to serve. In particular, the proposal will enable portfolio managers who wish to hedge large stock portfolios to use the CBOE's broad-based stock index options for that purpose. At the same time, the proposal is unlikely to increase manipulation or disruption concerns.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Dated: May 24, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12427 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[24] 15 U.S.C. 78f (1982).

[25] 15 U.S.C. 78s(b)(2) (1982).

[26] 17 CFR 200.30-3(a)(12) (1987).

[Release No. 34-25748; Filed No. SR-PHLX 88-17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to AUTOM Transaction Fees

Pursuant to section 91(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 2, 1988, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act") submits a proposed rule change amending the PHLX's Options Charges Schedules for the purpose of including Automated Options Market System Charges. All other fees and charges on these schedules will remain the same. The text of the proposed changes includes the following (additions are underscored, deletions are in brackets):

Equity Options Charges

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own members firms or for transactions executed over the AUTOM System.

Value Line Option Charges

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own members firms.

Foreign Currency Option Charges

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own member firms.

European Currency Unit

Options Floor [Broker] Transaction Fee.
$.05 per contract, for floor brokers executing transactions for their own member firms.

A copy of the current Summary of Charges and Fees is attached hereto.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to amend the Exchange's options charges to include a transaction fee that will be imposed on transactions performed via the Phlx's new options order delivery system.

The Automated Options Market System ("AUTOM") is the Phlx's new automated order delivery and reporting system which is designed to route member firm orders directly to the

options trading floor. This new system went into effect on a pilot basis on April 8, 1988. It is designed to enable member firms to transmit orders from off-the-floor over remote communication lines directly to options specialists on the Exchange floor. Thus the AUTOM system eliminates the need for a broker-dealer to use any floor personnel for the execution of eligible orders.

The Exchange assesses fees on all trades brokered on the options floor. For orders handled by an independent floor broker, a fee equal to 5% of the broker's net income is assessed. For orders executed by a member firm's own brokers, a commission is not charged, so the 5% fee is inapplicable. Instead, a charge of $.05 per contract is assessed. An independent floor broker also is not used for AUTOM trades. Thus, the proposed rule change makes it clear that the $.05 per contract assessment will apply to transactions effected over the AUTOM System.

To insure that all users understand that the fee applies whether a transaction is executed by a firm's own floor broker or through AUTOM, the exchange is changing the name of the fee from Floor Broker Transaction Fee to Options Floor Transaction Fee. All other fees and charges on these schedules will remain the same.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on this proposed rule change have been solicited or received.

III. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-88-17 and should be submitted by June 23, 1988.

IV. Commission Findings and Triming for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(4) in that the proposed fees constitute an equitable allocation of reasonable fees among members and member firms using its facilities. The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 25, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12426 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16413; File No. 811-5211]

Application; The Advest Advantage Investment Trust

May 26, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION. Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The Advest Advantage Investment Trust.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on April 29, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 20, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The Advest Advantage Investment Trust, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Cindy J. Rose, (202) 272-2058, or Special Counsel David Goldstein, (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a business trust which was organized under the laws of the Commonwealth of Massachusetts on June 11, 1987. The Applicant is an open-end diversified management investment company, registered under the 1940 Act on Form N-1A. The registration statement was declared effective on July 29, 1987 under the Securities Act of 1933.

2. The Applicant consists of five series, The Advest Advantage Money Market Fund, The Advest Advantage Special Fund, The Advest Advantage Growth Fund, The Advest Advantage Government Securities Fund, and The Advest Advantage Income Fund.

3. Shares of beneficial interest in the Applicant ("Shares") were sold only to Hartford Life Insurance Company's Advest Variable Annuity Separate Account (the "Separate Account") to provide an investment vehicle for certain variable annuity contracts (the "Contracts") issued by the Hartford Life Insurance Company through its Separate Account. The Separate Account began offering the Contracts in July 1987.

4. The sale of Contracts was not as successful as the Hartford Life Insurance Company and the Applicant had hoped and, consequently, the assets of the Applicant did not increase significantly as a result of investment through the Contracts.

5. The Applicant determined that continued efforts to effect new sales of the Contracts were not in the best interests of the Contractholders, the Separate Account or the Applicant.

6. By letter dated January 28, 1988, the outstanding Contractholders for the Separate Account, the sole shareholder of the Applicant, were offered the option of either surrendering their Contracts in exchange for the fully-appreciated net asset value of the Contracts with no surrender or redemption fee charged or using such net asset value to effect an exchange of the Contracts for another Hartford Life Insurance Company annuity contract.

7. As of January 28, 1988, there were issued and outstanding 17,561 shares of The Advest Advantage Growth Fund, having a net asset value of approximately $1.01 per share and 22,281 shares of The Advest Advantage Income Fund having a net asset value of approximately $1.00 per share.

8. As of March 4, 1988, all of such outstanding Contractholders had exercised one of such options and there were no outstanding securityholders of the Separate Account.

9. As of March 4, 1988, the Separate Account had exercised its right to redeem all of its Shares of The Advest Advantage Growth Fund and The Advest Advantage Income Fund, the only two of the five series funds of the Applicant that had any outstanding Shares. Once the Separate Account redeemed all its Shares, there were no outstanding Shares, and consequently, no outstanding shareholders, of the Applicant.

10. As of March 31, 1988, after considering the inactive state and the lack of any remaining shareholders or assets of the Applicant, the entire number of Trustees then in office resolved by written consent pursuant to sections 2.8, 8.2 and 8.4 of the Applicant's Declaration of Trust to terminate the Applicant, to request an order under section 8(f) of the 1940 Act declaring the Applicant has ceased to be an investment company and to file a Certificate of Termination with the Commonwealth of Massachusetts and the City of Boston, Massachusetts.

11. The Applicant currently has no assets and no shareholders.

12. Applicant is not a party to any litigation or administrative proceeding.

13. After the termination of the Applicant was approved by the Trustees, the Applicant ceased to engage in any business other than that necessary for the winding up of its affairs.

14. All expenses of liquidation and all expenses related to deregistration under the Securities Act of 1933 and the 1940 Act have been paid by Advest, Inc. or Boston Security Counsellors, Inc., the investment adviser to the Applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12424 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16411; 812-4996]

Application; Cheval/Alliance U.S. Equity Fund; Investment Company Deregistration

May 25, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order declaring that applicant has ceased to be an investment company.

Applicant: Cheval/Alliance U.S. Equity Fund.

Relevant 1940 Act Section: Order requesting deregulation under section 8(f) and Rule 8f-1.

Summary of Application: Applicant requests an order under section 8(f) declaring that Applicant, which registered under the 1940 Act as an open-end diversified management investment company, has ceased to be an investment company.

Filing Date: The application was filed on March 23, 1988 and amended on May 18, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 17, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the appropriate Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, (202) 272-3026 or Brion R. Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation, Division of Investment Mangement.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 [Maryland (301) 253-4300].

Applicant's Representation

1. Applicant was organized as a Massachusetts Business Trust. On January 28, 1987, Applicant registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, managment investment company.

2. Applicant registered an indefinite number of its par value $.01 shares of beneficial interest. Applicant, however, never made a public offering of its securities.

3. Applicant has not transferred any of its assets to a separate trust within the last 18 months. Applicant has not retained any assets for any purpose.

4. Applicant is not a party to any litigation or administrative proceedings, and is not now nor does not propose to engage in any business activities other than those necessary to affectuate the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12423 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24651]

Application; Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 26, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and

any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 20, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Middle South Utilities, Inc., et al. (70–7119)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed a post-effective amendment to their declaration pursuant to section 12(b) of the Act and Rule 45 promulgated thereunder.

By order dated May 28, 1986 (HCAR No. 24107), Middle South was authorized to guarantee certain obligations in connection with leasing of two IBM 3090/200 computer systems by MSU System Services, Inc. ("Services"), a wholly owned service company subsidiary of Middle South, for use at its data processing center in Gretna, Louisiana, and the upgrading of both computer systems. The computer systems were leased under a Master Lease Agreement, dated May 9, 1980, and two separate Equipment Schedules ("Schedule 36" and "Schedule 41"), dated November 4, 1985 and January 20, 1986, respectively, at monthly rental payments of $175,893 through December 31, 1989 for Schedule 36 and $176,737 through March 31, 1990 for Schedule 41. Middle South was further authorized to guarantee Services' lease obligations with regard to the upgrading of the computer systems at an aggregate acquisition cost not to exceed $9,280,000, for a term in each case coterminous with Schedule 36 and Schedule 41, at monthly rental payments to be guaranteed by Middle South not to exceed $175,893 and $127,000, respectively.

Middle South now proposes to guarantee Services' lease obligations for Schedule 41 equipment upgrading, without recourse to Services first being required. Schedule 36 equipment has been leased back to the lessor, Comdisco, Inc. ("Comdisco"), at rental payments equal to Services' corresponding rental payments over the remaining initial term of the lease. Schedule 41 equipment has been upgraded to provide Services with additional computer capacity at an aggregate monthly rental of approximately $169,829 through September 30, 1991. It is stated that the upgraded Schedule 41 equipment is sufficient to meet Services' computer capacity needs and, therefore, Schedule 36 computer capacity is no longer required. Further, the subleasing of Schedule 36 equipment and the upgrading of Schedule 41 equipment has resulted in cost savings and in efficiencies associated with the utilization of a single computer system and related upgrading.

Ohio Power Company et al. (70–7387)

Ohio Power Company ("OPCo"), a wholly owned subsidiary of American Electric Power Company, Inc., a registered holding company, and OPCo's subsidiaries, Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company, and Windsor Power House Coal Company (collectively with OPCo, the "Applicants"), all located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated June 16, 1987 (HCAR No. 24413), the Applicants were authorized to enter into renewable Master Leasing Agreements with a nonaffiliate, the Connecticut Bank and Trust Company ("Connecticut"), whereby Connecticut will least to the coal mining subsidiaries, between July 1, 1987 and June 30, 1988, mining equipment with a total aggregate acquisition cost not exceeding $22 million for term of four, six and eight years. OPCo was further authorized to execute a guaranty agreement to unconditionally and irrevocably guarantee COCCo's payment obligations in connection with such leasing arrangements. Because Applicants will extend such leasing arrangement to October 1, 1988, OPCo is requesting authorization to extend its guaranty of such payment obligations of COCCo to October 1, 1988.

Eastern Utilities Associates (70–7521)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a declaration pursuant to sections 6(a)(2) and 7 of the Act.

On February 7, 1979 (HCAR No. 20916), EUA was authorized, in relevant part, to issue and sell $22.5 million of unsecured 10¼% Senior Notes, due March 1, 1999 ("Senior Notes"), pursuant to the terms and conditions set forth in a Note Agreement dated May 23, 1979 between EUA and each of five institutional investors ("Note Agreement").

Following the issuance and sale of the Senior Notes, EUA: (1) Consolidated Brockton Edison Company and Fall River Electric Company into a single, wholly owned electric operating company, Eastern Edison Company; (2) acquired EUA Power Corporation ("Power") as a wholly owned utility subsidiary; (3) acquired and organized EUA Cogenex Corporation ("Cogenex") and EUA Energy Investment Corporation ("Energy"), wholly owned non-utility subsidiaries; and (4) organized EUA Ocean State Corporation ("Ocean State") to be a 25% equity partner in Ocean State Power partnership ("Partnership") which is in the process of constructing a gas-fired generating plant in Rhode Island.

EUA states that it will be required to guarantee the making of capital contributions by Ocean State to the Partnership, that it may be asked to provide guarantees or other assurances in conjunction with the activities of Cogenex, Energy or other present or future subsidiaries, and that certain provisions contained in the Note Agreement hamper EUA system's ability to take full advantage of the business potential available from investments in present or future EUA subsidiaries.

The failure of an EUA subsidiary, including EUA Power, to make a payment due on its outstanding notes, or such subsidiary's admission in writing of its inability to pay its debts as they become due, or assignment for benefit of creditors, or appointment of a receiver or filing or consent to a filing of a petition in bankruptcy, is a default under EUA's Note Agreement. Consequently, EUA proposes to eliminate EUA Power from the cross-default provisions of the Note Agreement.

EUA thus proposes to amend the Note Agreement to: (1) Modify section 10.5 by excluding from the definition of Consolidated Funded Debt for purposes of that section all guarantees given by subsidiaries other than those guarantees expressly assumed or guaranteed by EUA and those consisting of a direct, express guarantee of payment of any indebtedness, liability or other

obligation represented by a note, bond, debenture or similar security; (2) eliminate from section 10.6 a limitation on guarantees by EUA of the indebtedness liabilities and other obligations of any subsidiary; (3) amend section 12.1 to provide that the cross-default provisions of subsections (e), (f), (g), (h) and (i) thereof shall not apply to Power; (4) eliminate Power from the definition of subsidiary which applies with respect to covenants included in sections 10.2 and 10.4; (5) exclude from the definition of Funded Debt in section 11.1 all indebtedness of Power other than indebtedness which has been expressly assumed or guaranteed by EUA; (6) exclude from the definition of Total Capitalization in section 11.1 any and all equity investments in Power.

In order to obtain the required approval of 75% in aggregate principal amount of the outstanding Senior Noteholders to the proposed amendments, EUA also proposes to increase the annual interest rate on the Senior Notes from 10¼% to 10¾%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12425 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 1124; File No. 801-23047]

Intention to Cancel the Registration of TSC Investment Management, Inc.

May 25, 1988.

Notice is hereby given that the Securities and Exchange Commission intends to issue an order pursuant to section 203(h) of the Investment Advisers Act of 1940 cancelling the registration of TSC Investment Management, Inc. ("TSC Investment"). Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person.

On Janaury 14, 1988, Katherine Williams McGuire ("Williams"), through counsel, submitted to the Commission, her intention, as sole officer and shareholder of TSC Investment, to withdraw the investment adviser registration of TSC Investment. Further, Williams stated that the corporate existence of TSC Investment is being terminated and that TSC Investment is and had been inactive as an investment adviser since at least July 28, 1987.

In view of these circumstances, the Commission believes that reasonable grounds exist to support a finding that the registrant is no longer in existence or is not engaged in business as an investment adviser.

Notice is given that any interested person may, not later than thirty days after the date of this publication, submit to the Commission in writing a request for a hearing on the matter, accompanied by a statement as to the nature of his interest, the reasons for such request, and the request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order cancelling the registrant of TSC Investment upon the basis of the information stated therein unless an order for hearing on said cancellation shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-12422 Filed 6-1-88; 8:45 am]

BILLING CODE 8010-01-M

[CM-8/1194]

DEPARTMENT OF STATE

Shipping Coordinating Committee; Open Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 pm. on June 13, 1988, in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 60th Session of the Council of the International Maritime Organizations (IMO) which is scheduled for June 20–24, 1988 in London. In particular, the SHC will discuss the development of U.S. positions dealing with, inter alia, the following topics:

—Reports of the Major Committees.

—Financial Matters.

—Personnel Matters.

Member of the public may attend up to the seating capacity of the room.

Interested persons may seek information by contacting Mr. G.P. Yoest, U.S. Coast Guard Headquarters, (G-CPI), 2100 Second Street, SW., Washington, DC 20593; Tel: (202) 267-2280.

Date: April 29, 1988.

Peter R. Keller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 88-12325 Filed 6-1-88; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21-EPC; Extending a Production Certificate to Include a Facility Located in a Foreign Country

AGENCY: Federal Aviation Administration (FAA); DOT.

ACTION: Notice of availability of proposed Advisory Circular 21-EPC and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed Advisory Circular (AC) 21-EPC, Extending a Production Certificate to Include a Facility Located in a Foreign Country. The proposed AC provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of the Federal Aviation Regulations (FAR) Part 21, Certification Procedures and Products and Parts, concerning the production of completed products, (i.e., aircraft, engines, propellers), and major modifications to aircraft. This ntoice announces the availability of proposed AC 21-EPC for review and comments.

DATE: Comments must identify the AC file number, P8-220-070, and be received by September 1, 1988.

ADDRESSES: Copies of the proposed AC can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AWS-220, Aircraft Manufacturing Division, Office of Airworthiness, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Frank P. Paskiewicz, Production Certification Branch, AWS-220, Aircraft Manufacturing Division, Room 333, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267-8361.

SUPPLEMENTARY INFORMATION: .

Background

This proposed AC provides information and guidance concerning holders of FAA production certificates, that have entered into coproduction agreements with partners located in foreign countries. The proposed AC delineates the criteria to determine the viability of such programs, the manufacturers role and responsibilities, and the FAA's responsibilities.

Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final AC.

Comments received on the proposed AC may be examined, before and after the comment closing date in Room 333, FAA Headquarters Building (FOB–10A) 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Sandy DeLucia,

Manager, Aircraft Manufacturing Division.

[FR Doc. 88–12319 Filed 6–1–88; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–88–18]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132..

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 24, 1988.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25300	Atlantic Southeast Airlines, Inc	14 CFR 121.441 and Appendix F of Part 121.	To allow petitioner's pilots to use a Phase I simulator to meet the requirements for initial and recurrent pilot testing and for instrument proficiency checking for pilots in command.
25597	Marsh Aviation Co. and the California Department of Forestry.	14 CFR 21.73 (a) or (c) and 21.213 (a) or (c).	To allow the California Department of Forestry to operate a modified Grumman TS–2A aircraft under the provisions of a Class I Provisional Type Certificate until the engine modifications have been approved by the FAA.

[FR Doc. 88–12318 Filed 6–1–88; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Announcing the Third Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to coordinate motor vehicle safety research and avoid duplication of effort. At this meeting the Committee will consider specific research related to rollover crash protection for occupants of passenger cars, light trucks, and vans; biomechanics of injury; and the use of "Information Age" electric technologies to improve vehicle safety in the traffic of tomorrow.

DATE AND TIME: The meeting is scheduled to begin at 10:30 a.m. on June 14, 1988, and conclude at 5:00 p.m. on June 15.

ADDRESS: The meeting will be held in Room 2230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, and participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be

open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366–4862.

Issued on May 26, 1988.

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 88–12321 Filed 6–1–88; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 106
Thursday, June 2, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 7, 1988.

PLACE: 2033 K St. NW., Washington DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb.

Secretary of the Commission.

[FR Doc. 88–12502 Filed 5–31–88; 3:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 28, 1988.

PLACE: 2033 K St. NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Mercantile Exchange for designation as a contract market in 5,000-Troy Ounce Silver futures contracts

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–12503 Filed 5–31–88; 3:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, June 28, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Reviews
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88–12504 Filed 5–31–88; 3:03 pm]

BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Tuesday, June 7, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. FY 1989 Qualification Criteria for the TERO Program
4. Proposed FY 1989 Funding Principles for the State and Local Fair Employment Practices Agencies

Closed Session

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting) on (202) 634–6748.

Date: May 26, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

[FR Doc. 88–12418 Filed 5–27–88; 4:15 pm]

BILLING CODE 6750–06–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 18948, Wednesday, May 25, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Wednesday, June 1, 1988.

CHANGE IN THE MEETING:

Closed Session

Litigation Authorization: General Counsel Recommendation has been added to the agenda

CONTACT PERSON FOR MORE INFORMATION: Hilda D. Rodriguez, Executive Officer (Acting), Executive Secretariat, (202) 634–6748.

Date: May 26, 1988.

Hilda D. Rodriguez,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued May 26, 1988.

[FR Doc. 88–12419 Filed 5–27–88; 4:14 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 88–11431.

PREVIOUSLY ANNOUNCED DATE AND TIME Thursday, May 26, 1988, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Revised Draft AO 1988–16—Michael A. Nemeroff on behalf of the American Medical Association and the American Medical Political Action Committee.

* * * * *

DATE AND TIME: Tuesday, June 7, 1988, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 9, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Status of Presidential Audits.
Draft AO 1988–24—H. Lee Halterman on behalf of The Committee for Congressman Dellums.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Mary W. Dove,

Administrative Assistant.

[FR Doc. 88–12498 Filed 5–31–88; 3:00 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 6, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Cone, Assistant to the Board; (202) 452–3204.

You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: May 27, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–12420 Filed 5–27–88; 4:49 am]

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, June 7, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Capsizing and Sinking of the U.S. Fishing Vessel LARK, Atlantic Ocean, Nantucket Island, Massachusetts, October 9, 1987.
2. Railroad Accident Report: Head-on Collision of two CSX Freight Trains, East Concord, New York, February 6, 1987.
3. Recommendations A–87–116 through –120: Flight Restrictions Over Hazardous Materials Spills and Other Disasters. (Calendared by Chairman Burnett.)

FOR MORE INFORMATION CONTACT: Bea Hardestly, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

May 27, 1988.

[FR Doc. 88–12445 Filed 5–31–88; 11:35 am]

BILLING CODE 7533–01–M

Federal Register

Thursday
June 2, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 8

Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities; Final Rule

Delegation and Re-Delegation of Authority; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 8

[Docket No. R-88-528; FR-770]

Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD adopts procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. The rule implements section 504 of the Rehabilitation Act of 1973, as amended.

EFFECTIVE DATE: July 11, 1988, except for §§ 8.21(c)(4), 8.24(d), 8.25(c), 8.51, and 8.55(b), that contain information collection requirements. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

FOR FURTHER INFORMATION CONTACT: Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-5404. A telecommunications device for deaf persons (TDD) is available at (202) 755-1734. These are not toll free numbers. This rule will be available on tape for persons with vision impairments in the Office of the Rules Docket Clerk, Room 10268 at the above address.

SUPPLEMENTARY INFORMATION:

Background of the Rule

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides that "No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *."

On May 6, 1983, HUD published an interim rule establishing procedures and policies to ensure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department (48 FR 20638, republished at 48 FR 22470, May 18, 1983). On June 15, 1983, the Department revoked the notice of effective date of the interim rule (48 FR 27528) and issued a notice that it was treating the published interim rule as a proposed rule and extending the comment period to September 6, 1983 (48 FR 27529).

HUD received a total of 1,273 comments on the proposed rule. The Department read and analyzed each comment, whether received before or after the formal comment period expired on September 6, 1983. Over 800 of these comments consisted of six groups of form comments, leaving over 400 separate comments, many of which are lengthy and detailed. The Department prepared a comprehensive summary of the public comments for its internal use in reviewing and considering the numerous comments received in preparation of the final rule. Because the issues raised in both the proposed rule and the comments are complex and because there is a diversity of interests affected by this rule, the Department made the 55-page summary prepared for internal use available to the public free of charge (48 FR 56798, December 23, 1983). Approximately 700 copies of the summary were requested and distributed to interested persons.

The Department formed a Section 504 Task Force to consider the public comments received in preparation of the final rule. This Task Force was composed of high level representatives of the major elements of the Department. A group of major disability organizations on two occasions requested meetings with the Task Force. The first such meeting was held on August 25, 1983 and the second on November 2, 1984. At these meetings the representatives of the disability groups represented provided oral comments on the proposed rule. The Department also received important and valuable written comments from housing providers around the country. The issues raised by all of the comments received in response to the proposed rule received careful consideration in the preparation of the final rule.

Section-by-Section Analysis and Response to Public Comments

Preamble

The preamble of the proposed rule was discussed in 206 of the comments received. Many of these commenters stated without explanation that the preamble "misuses civil rights case law." Only six commenters provided explanations of their criticisms. This much smaller number of commenters understood the preamble to state that section 504 requires *only* that "modest affirmative steps" be taken to prevent discrimination against disabled persons. However, the preamble in fact states that court decisions "have confirmed that section 504 requires *at least* "modest affirmative steps to accommodate handicapped persons." 48 FR 22477 (emphasis supplied).

Subpart A—General Provisions

Section 8.1

Four commenters expressed concern over the sentence in § 8.1(a) of the proposed rule which stated that compliance with 24 CFR Part 8 "does not assure compliance with requirements for accessibility by the physically handicapped imposed pursuant to the Architectural Barriers Act of 1968, as amended, (41 U.S.C. 4151 *et seq.*) where applicable." These commenters expressed some confusion as to the relationship between HUD's Architectural Barriers Act rule (24 CFR Part 40) and HUD's section 504 rule. These comments are discussed along with other similar comments received on § 8.30 of the proposed rule which proposed standards for facility accessibility or dwelling unit accessibility when applicable.

HUD has amended § 8.1 to add that the rule also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). Section 109 prohibits discrimination in the Community Development Block Grant (CDBG) Program. Section 109 provides that any prohibition of discrimination with respect to other qualified individuals with handicaps as provided in section 504 shall also apply to the CDBG program.

Section 8.2

Section 8.2 of the proposed rule, which described the applicability of the rule, has been substantially rewritten from the wording of the proposed rule. However, the language was changed only to make the section easier to understand; the revised language does not alter the scope of the rule.

Section 8.3

A total of 985 comments were received on § 8.3, the definitions section of the proposed rule.

Three different definitions of the term "accessible" were proposed. The first definition of the term accessible in the

proposed rule stated that "accessible", when used with respect to a program or activity, means that such program or activity is conducted, delivered, or offered in such a way that qualified handicapped persons can benefit from and participate in the program or activity. The Department is deleting this definition from the final rule because it is vague and unnecessary in view of § 8.20 of the rule which sets forth the general requirement concerning program accessibility.

The second definition of "accessible" which appeared in the proposed rule has been revised to state that the term, when used with respect to the design, construction or alteration of a facility or a portion of a facility, other than an individual dwelling unit, means that such facility or portion thereof, when designed, constructed or altered, can be approached, entered and used by individuals with handicaps. A facility that complies with the standards prescribed by § 8.32 of the final rule, the Uniform Federal Accessibility Standards (UFAS), satisfies this definition of the term accessible. The revision of this definition of "accessible" means that under the final rule UFAS is not the *sole* means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible.

The third definition of the term "accessible" relates to the design, construction, or alteration of individual dwelling units. The first sentence of this definition has been revised from the proposed rule to make it consistent with the concept of adaptability and to clarify the definition. The first sentence of the definition now provides that "accessible", when used with respect to the design, construction, or alteration of an individual dwelling unit, means that such unit is located on an accessible route and when designed, constructed, altered, or adapted, can be approached, entered, and used by individuals with physical handicaps. Again, UFAS is not the *sole* means of achieving accessibility. Furthermore, the definition in the final rule, as did the definition in the proposed rule, makes it clear that an adaptable unit on an accessible route is an "accessible" unit for purposes of this rule.

The term "adaptable" in the proposed rule has been changed to "adaptability" in the final rule and minor editorial changes have been made to clarify the definition.

The definition of the term "applicant for assistance" has been revised for clarity. The revised definition provides that an "applicant for assistance" is one who submits an application, request, plan or statement required to be approved by a Department official or by a primary recipient as a condition to becoming eligible for Federal financial assistance. An application means such a request, plan or statement.

A definition of the term "auxiliary aids" has been added to the final rule in light of the addition of § 8.6, dealing with communications. Section 8.6 is discussed in more detail below.

The definition of "Federal financial assistance" has been clarified. The revised definition also explicitly states that the term "Federal financial assistance" includes proceeds from guaranteed loans in the Community Development Block Grant program. *See* 24 CFR 570.602 (a) and (c).

The final rule contains definitions of the terms "historic preservation programs or activities" and "historic properties." The term "historic properties" is used in § 8.31 of the final rule. The definition appeared in § 8.29 of the proposed rule. It has not been changed substantively. The term "historic preservation programs or activities" is used in § 8.21(c) of the final rule. An historic preservation program or activity is a HUD-assisted program having preservation of historic properties as a primary purpose.

Section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps." Accordingly, the final rule refers to "individual with handicaps" and "qualified individual with handicaps," instead of "handicapped person" and "qualified handicapped persons," respectively. The definition of "individual with handicaps" is identical to the definition of handicapped person appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. In particular, although the term "individual with handicaps" as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged, except for the addition of language relating to alcoholics or drug abusers which was part of the definition of "qualified handicapped persons" in the proposed rule and one other change made as a result of the enactment in 1988 of the Civil Rights Restoration Act. These two changes are discussed below.

The definition of "qualified individuals with handicaps" ("qualified handicapped persons" in the proposed rule) has been revised in a number of respects from the definition the Department proposed in 1983. The proposed rule contained one definition with respect to employment and another definition with respect to programs or activities other than employment. While the distinction between employment and non-employment programs has been retained in the final rule, the Department has added a definition of "qualified individual with handicaps" with respect to any program or activity under which a person is required to perform services or to achieve a level of accomplishment. This addition is an adaptation of the definition of "qualified individual with handicaps" in the Department of Justice revised prototype for Federally conducted programs (§ ____.103). In a program or activity under which a person is required to perform services or to achieve a level of accomplishment a "qualified individual with handicaps" is defined as an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature.

In the proposed rule, the definition of "qualified handicapped persons" with respect to employment stated that the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. This language is derived from a 1978 amendment to the Rehabilitation Act. 29 U.S.C. 706(7)(B), as amended by section 122(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendment of 1978. In the final rule, this language has been deleted from the definition of "qualified individual with handicaps" and added to the definition of "individual with handicaps" to more closely follow the statutory language.

The portion of the definition of "qualified handicapped persons" with respect to programs or activities in § 8.3 of the proposed rule was criticized because of the phrase excluding from that definition "any individual whose

current use of alcohol or drugs would constitute a direct threat to the property or safety of others." A number of commenters believe that this phrase should be deleted because the Rehabilitation Act only makes an express distinction relating to drug and alcohol use for purposes of employment. Although this statutory language does not apply expressly in contexts other than employment, it is clear that individuals whose participation, by reason of current alcohol or drug abuse, would constitute a direct threat to the property or safety of others are not "individuals with handicaps" for purposes of section 504. Therefore, this language has, with some clarification, been retained in the final rule. However, as previously explained, it has been moved to the definition of "individual with handicaps."

The Department also wishes to stress that the fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored by recipients in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified. For example, a person's participation in an alcoholics anonymous group does not, in and of itself, disqualify the person from the definition of "individual with handicaps."

With respect to the employment of a drug addict or alcoholic, if the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider for all applicants, including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work place, provided that such rules are enforced against all employees.

With respect to other services, the implications of coverage of alcoholics and drug addicts are two-fold: First, no person with handicaps, whether or not related to drug addiction or alcoholism, may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause interference with the operation of the program, the condition may be taken into consideration. Thus, an owner may not exclude an addict or alcoholic as a tenant on the basis of addiction or alcoholism if the recipient determines that the person can successfully participate in the housing program and complies with the rules of the program and if his or her behavior does not constitute a direct threat to property or the safety of others.

There was strong reaction to the portion of the definition of "qualified handicapped persons" (now "qualified individuals with handicaps") that proposed to define the term "essential eligibility requirements." Most commenters criticized the phrase in the proposed rule indicating that handicapped persons must comply "with all obligations of occupancy, including the obligation to conduct himself or herself in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodation * * *." The basic criticism of this language was that it would impose a "double standard" because non-handicapped persons are not required to prove that their behavior will not disturb neighbors.

The quoted language was not intended to impose a "double standard." All applicants for and tenants of HUD-assisted housing have an obligation not to disturb their neighbors' peaceful enjoyment of their accommodations. For example, and as some commenters recognized, the model lease for many HUD programs requires that tenants agree not to "make or permit noises or acts that will disturb the rights or comfort of neighbors." In addition, HUD's tenant selection criteria for public housing require that Public Housing Agencies (PHAs) establish criteria "reasonably related to whether the conduct of the applicant in present or prior housing has been such as would not be likely to interfere with other tenants *in such a manner as to diminish their enjoyment of the premises* * * *." 24 CFR 960.205(b) (emphasis supplied). Thus, the "peaceful enjoyment" language included in the definition of "essential eligibility requirements" for programs or activities other than employment does not impose a requirement on handicapped housing applicants that is not imposed on non-handicapped housing applicants. Rather, it is merely an illustration and application of the requirement that in order to be considered a "qualified individual with handicaps" an individual must meet the "essential eligibility requirements" of the program. In this regard, a number of commenters supported the "peaceful enjoyment" language as consistent with the professional management of housing.

Nonetheless, the large number of comments critical of the quoted language indicates that the language could be misinterpreted and misapplied by recipients. Consequently, the Department is deleting the "peaceful enjoyment" language in the final rule. The deletion of this language does not, however, alter the requirement that in order for a handicapped person to be a "qualified individual with handicaps" he or she must meet all of the stated and inherent essential eligibility requirements of the program in question.

There was also criticism of the portion of the definition of "essential eligibility requirements" which requires that an occupant of multifamily housing be capable of independent living. Some commenters feel that the language should be omitted altogether because disabled persons can determine for themselves whether or not they can live independently. Other commenters suggested that the rule should provide standards, criteria and procedures for evaluating whether or not an applicant is capable of independent living. Still other commenters supported the definition as proposed.

After carefully considering the comments received regarding the phrase "capable of independent living" in § 8.3 of the proposed rule the Department has determined to delete the phrase from the definition. Instead, the definition as revised focuses upon an occupant of multifamily housing being capable of complying with all obligations of occupancy either without supportive services or with supportive services provided by persons *other than* the recipient. Such a person is qualified for housing.

In a housing program, an individual with handicaps is "qualified" if the person meets the basic eligibility requirements that govern eligibility for admission, care, or service normally provided to others. For example, in a section 202 project a person is ineligible

for housing for elderly persons if the person does not meet the age requirement for admission to the program. On the other hand, an individual with handicaps is "qualified," for example, for public housing, if the person meets current eligibility requirements such as income as well as implicit requirements inherent in the nature of the program, such as that an occupant be capable of complying with all obligations of occupancy. Accordingly, persons with handicaps can be denied program benefits, such as occupancy of a dwelling unit in a HUD-assisted housing project, on the basis of failure to meet legitimate eligibility criteria that are applied to individuals both with and without handicaps. For example, an individual with handicaps can be denied occupancy on the basis of a record of disturbance of neighbors, or destruction of property that may adversely affect other residents, or failure to meet rent obligations, even if the behavior is related to the person's handicap. HUD recipients will have to make decisions as to whether each applicant is qualified on a case-by-case basis in the course of their ordinary eligibility determinations. In making these determinations, a presumption in favor of the individual's own assessment of his or her capabilities is warranted in the absence of substantial evidence to the contrary.

At the same time, a recipient is not required to provide supportive services, *e.g.*, counseling, medical, or social services that fall outside the scope of its housing program. A recipient is required to make modifications in order to enable a qualified applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the recipient does not offer. For example, in a housing program a recipient is not required to provide supportive services to enable an individual with handicaps to participate in the program unless the purpose of the program is, at least in part, to provide supportive services. See § 8.24(b). In a program in which supportive services are not contemplated, providing them would result in a fundamental alteration in the program—*e.g.*, to an intermediate care program. In this example, if the individual does not require supportive services from the recipient, the individual would be qualified, provided that he or she meets the essential eligibility requirements for the program. Of course, all services (e.g., routine medical check-ups or social services) that are provided as part of the program must be provided on a nondiscriminatory basis. The rule also provides that recipients need not take any action that would result in undue financial and administrative burdens.

It should be noted that some projects are designed specifically for persons who are *not* capable of living completely "independently", *see, e.g.*, 24 CFR 882.102 (definition of "Independent Group Residence"). However, most HUD-assisted housing projects do not offer support services. In a project that does not provide support services it is not legally significant whether the obligations of tenancy are met by the individual alone or with assistance which he or she arranges. However, the Department wishes to stress that a recipient is not required to provide support services to meet the needs of an individual with handicaps if these services are not part of the original program. Such action would constitute a fundamental alteration in the nature of the program, which is not required by section 504. *Southeastern Community College v. Davis*, 442 U.S. 397 (1979).

A number of other definitions have been added to § 8.3 of the rule.

A definition of the term "program or activity" has been added to the rule as a result of the enactment of the Civil Rights Restoration Act of 1987 (Pub. L. 100–259). Section 4 of the Civil Rights Restoration Act amended section 504 to add a definition of the term "program or activity" as that term is used in section 504. The definition of the term "program or activity" in the final rule restates the definition in the Civil Rights Restoration Act.

Section 9 of the Civil Rights Restoration Act amended section 7(8) of the Rahabilitation Act of 1973, 29 U.S.C. 708(8), to add a new subparagraph (C) which states that for purposes of section 504, as it relates to employment, the term individual with handicaps "does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job." This language has been added to the definition of "individual with handicaps" in the rule in order to conform the rule to the statute, as amended by Congress.

The Civil Rights Restoration Act also amended section 504 to add a provision relating to "small providers." It states that "small providers" are not required by section 504 to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The Civil Rights Restoration Act further provides that the terms used in the subsection relating to small providers "shall be construed with reference to the regulations existing on the date of the enactment of this subsection." The Civil Rights Restoration Act does not contain a definition of the term "small provider." The Department is considering publishing a proposed rule which would amend Part 8 to add a definition of "small provider" and otherwise implement the provision of the Civil Rights Restoration Act relating to small providers.

A definition of the term "primary recipient" has been added to the final rule. A "primary recipient" is defined to mean any person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

The final rule defines the term "replacement cost of the completed facility." The term, which is used in § 8.23(a) of the final rule, is defined as the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities. This definition, which did not appear in the proposed rule, has been added so the meaning of the term "replacement cost of the completed facility" will be clear. The definition in the final rule is based upon the definition of the term "prototype costs" as the term is used in the public housing program. *See* 24 CFR 941.204.

A definition of the term "substantial impairment" has also been added to § 8.3 as it relates to historic facilities. Substantial impairment is defined to mean a significant loss of the integrity of finished materials, design quality or special character resulting from a permanent alteration. The term is used in § 8.31 of the final rule which relates to historic facilities.

Section 8.4

A large number of commenters opposed the deletion in § 8.4(a) of the proposed rule of the words "or benefits from" from the phrase "any program or activity that receives *or benefits from* Federal financial assistance" that appears in the DOJ Coordination Regulation. 28 CFR 41.51(a) (emphasis supplied). In the preamble to the proposed rule (48 FR 22474) the Department explained that the deletion of the phrase "or benefits from" was made to conform the regulatory language to that of the statute and was not intended to alter the jurisdictional reach of section 504. The Department further stated in the preamble of the proposed rule that while the phrase "or benefits from" may be critical in the context of certain other government programs it is not aware of a context involving HUD programs where the phrase would make a difference. The Department invited comments as to specific contexts in which an issue as to the jurisdictional reach may be seen as arising based upon this language.

The Department received only a few examples in response to its request. The examples received express concern that deletion of the "or benefits from" language would mean that only direct recipients of HUD assistance would be covered by section 504. However, the commenters seem to be confusing two situations: Those in which programs *indirectly receive* actual Federal financial assistance, and those in which entities merely "benefit from," but do not receive, the assistance. The first are covered by section 504; the second are not. The definition of "recipient" in § 8.3 expressly includes any instrumentality of a State or its political subdivision, any private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or *through another recipient* * * *." Thus, the rule expressly covers subrecipients.

The Department also received a large number of comments stating that the Department should not have omitted from § 8.4(b)(4) of the proposed rule language in the Department of Justice Coordination Regulation stating that recipients may not utilize criteria or methods of administration that "have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap." 28 CFR 41.51(b)(3). These commenters pointed out that this language is important because intentional discrimination is often difficult to prove. Furthermore, the Supreme Court recently assumed, without actually deciding, that section 504 "reaches at least some conduct that has an unjustifiable disparate impact upon the handicapped." *Alexander v. Choate*, 469 U.S. 287, 289 (1985). The Court, in its analysis, reviewed the legislative history of section 504 and concluded that "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Id.* at 295 (footnote omitted). For these reasons, the Department has added language to § 8.4(b)(4) of the final rule making it clear that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the purpose or the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap. In addition, the Department has added language to § 8.4(b)(5) making it clear that applicants for assistance and recipients may not, in determining the site or location of a facility, make selections the purpose or effect of which would exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives Federal financial assistance.

Section 8.4(b)(4) prohibits the use of criteria or methods of administration that have the effect of discriminating against individuals of a particular handicap. However, not all instances of disparate impact signal the existence of illegal discrimination. If a neutral policy that causes a desparate effect is manifestly related to the accomplishment of a program objective, it does not violate this provision.

Section 8.4(b)(5) prohibits discriminatory site selection. Paragraph (b)(6) of the proposed rule would have allowed HUD to exempt a recipient from the requirement of paragraph (b)(5) if compliance would have rendered the facility "financially infeasible" or if the alternative to compliance would be "nonparticipation" in the program. The Department has deleted the exemption in § 8.4(b)(6) of the proposed rule because it is unnecessary. The final rule makes it clear that the rule's program accessibility requirements never require a recipient to take any action that would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Furthermore, the Department of Justice has consistently interpreted provisions similar to § 8.4(b)(5) as *not* prohibiting a recipient that has facilities located on hilly terrain, for instance, from erecting any new facilities at its present site. Furthermore, the deletion of paragraph (b)(6) makes HUD's final rule consistent with the Department of Justice Coordination Regulation. *See* 28 CFR 41.51(b)(4).

HUD has also added to § 8.4 a new paragraph (b)(6) prohibiting discrimination in facilities constructed with Federal funds. Finally, HUD has added to § 8.4(b)(1) a new subparagraph (§ 8.4(b)(1)(vii)) which prohibits a recipient from denying a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available. This provision makes it clear that a recipient may not refuse to rent or sell to an otherwise qualified individual because that individual resides, or intends to reside, with a person who is handicapped.

Section 8.4(c)(1) of the proposed and final rules provides that the exclusion of non-handicapped persons from the benefits of a program limited by Federal statute or executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this rule. An example of such a Federal program is found in section 202 of the Housing Act of 1959, 12 U.S.C. 1701 ("section 202"). The section 202 program provides Federal financial assistance to private sponsors who provide housing for the elderly and/or handicapped. There are three distinct categories of eligible handicapped persons in the section 202 program: Those who are physically handicapped; developmentally disabled; and chronically mentally ill. Thus, including elderly persons (age 62 or over) there are actually four separate groups of persons eligible from section 202 assistance, and each group has distinct needs. Accordingly, section 202 developments are custom tailored to the specific client population or populations the sponsor was approved by HUD to serve. For instance, many section 202 projects are lawfully limited to elderly and physically handicapped persons. It follows that developmentally disabled and chronically mentally ill persons who are not also elderly or physically handicapped, are not "otherwise qualified individuals with handicaps" for projects designed and approved for elderly and physically handicapped persons and cannot be admitted to them. As § 8.4(c)(1) makes clear, such a denial does not violate section 504. HUD's policy with regard to section 202

projects has been upheld in the courts. For example, in *Brecker v. Queens B'nai B'rith*, 607 F. Supp. 428 (E.D.N.Y. 1985), *aff'd*, 798 F.2d 52, 57 (2d Cir. 1986), the court stated that "[s]ection 504 may not be used to expand the delivery of benefits awarded under another statute if that statute otherwise restricts the delivery of benefits." *Id.* at 436 (citations omitted). *See also Knutzen v. Eben Ezer Lutheran Housing Center*, 815 F.2d 1343 (10th Cir. 1987); and *Edge v. Pierce*, No. 82–51, slip op. (D.N.J. May 22, 1984).

Two new paragraphs have been added to § 8.4. Section 8.4(e) deals with the relationship between this rule and inconsistent State or local laws. Paragraph (e) makes it clear that the obligation to comply with this rule is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

Paragraph (f) makes it clear that the enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of § 8.4 does not limit the general prohibition on discrimination in paragraph (a).

Section 8.4(e) of the proposed rule contained a requirement that recipients "take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired hearing." The final rule substitutes for § 8.4(e) a separate, more comprehensive and detailed section on communications (§ 8.6). Section 8.6 is adapted from the Department of Justice's regulation for federally conducted programs. Section 8.6 of the final rule explicitly requires the provision of auxiliary aids where necessary to ensure that qualified individuals with handicaps are provided opportunities to benefit from housing and nonhousing programs that are as effective as that provided to individuals without handicaps. Auxiliary aids are often critically needed in these programs. For example, to ensure effective communication with applicants, participants, and members of the public who are hearing- or speech-impaired, a recipient may be required to install in its office a telecommunication device to allow an individual with impaired hearing or speech to call directly to the recipient's office without the need for an interpreter. To provide persons with impaired vision with information as to the existence and location concerning its programs or activities, and facilities, a recipient may be required to tape record, print written material in large print or transcribe in Braille certain information concerning its programs or activities. A recipient may be required to provide devices such as auxiliary alarms for persons with hearing or vision impairments or a decoding device to equip a television in a public area to provide closed-captioning service, so that participants with hearing impairments receive benefits that are as effective as those provided to participants without handicaps. However, a recipient need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. For example, a recipient need not provide eye glasses or hearing aids to applicants or participants in its programs or activities. Similarly, the rule does not require a recipient to provide wheelchairs to persons with mobility impairments.

Subpart B—Employment

Section 8.11

Fifteen (15) comments discussed § 8.11, which requires that recipients make reasonable accommodation to the known physical or mental limitations of qualified handicapped applicants and employees. Five of these commenters suggested that § 8.11(b) be amended to require that an employer place handicapped persons in the job best suited to their individual handicaps. On the other hand, one commenter feels that section 504 does not require any job restructuring, even in the form of shifting non-essential duties to other employees. Section 8.11 strikes a balance in between these two positions. Paragraph (b) of § 8.11 makes clear that reasonable accommodation is intended to include, but is not limited to, the modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting non-essential duties to other employees. However, this does not mean that an employer is required to place a handicapped person in any one particular position. Rather, § 8.11 requires only that an employer make reasonable accommodation where necessary to help handicapped persons overcome difficulties they may have in performing the essential elements of a particular position. In addition, two commenters praised the examples of reasonable accommodation in § 8.11(b).

Section 8.13

Six comments were received on § 8.13 dealing with preemployment inquiries, two of which were of a detailed nature. One commenter expressed concern that the limitations on requiring a medical examination in § 8.13(c) would create problems for some large employers. Paragraph (c) proposed to allow an employer to condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty if two conditions are met. The commenter explained that it is not uncommon for multi-location corporations operating a central employment office to maintain large applicant pools, in some instances numbering as high as 300 applicants. These applicant pools enable employers to respond quickly to request for large numbers of employees needed for particular projects and the success of these pools depends upon an ability to match expeditiously applicant skills and qualifications with job requirements. The ability to respond quickly, it is argued, is lost if medical examinations can be given only after an applicant has already been conditionally hired and referred. On the other hand, another commenter feels that § 8.13 does not go far enough. This commenter specifically objected to allowing a mandatory medical examination unless *all* employees, and not just those in a particular job category, are required to take the examination. On balance the Department believes that § 8.13 should remain unchanged from the proposed rule. While the first commenter's concern is legitimate, allowing medical examination before an offer of employment (conditional or unconditional) is actually made creates a significant potential for discrimination against handicapped applicants. Furthermore, such discrimination would often be difficult to prove. The Department also believes that adoption of the second commenter's recommendation that the Department delete the phrase "in that category of job classification" from § 8.13(c)(1) would impose an unnecessary burden and expense on employers. For example, an employer may require medical examinations for positions involving physical labor but not for other types of positions. Such distinctions are reasonable and non-discriminatory. The Department see no reason to place section 504 recipients in the position of having to choose between requiring medical examinations in their federally assisted programs for all job classifications or foregoing medical examinations altogether. Of course, a recipient may only use the results of the medical examination in accordance with the requirements of this part. The results of a medical examination may not be used to deny employment to a

handicapped person who, with reasonable accommodation, can perform the job unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

Section 8.14

Because of several Federal Circuit court decisions, § 8.14 of the proposed rule provided that subpart B would not be enforced in certain states unless the primary objective of the Federal financial assistance was to provide employment. After the publication of the proposed rule the Supreme Court ruled that section 504 prohibits employment discrimination even if the recipient of Federal financial assistance receives no aid the primary purpose of which is to promote employment. *Consolidated Rail Corp. v. Darrone*, 104 S.Ct. 1248 (1984). Accordingly, § 814 of the proposed rule has been deleted in the final rule; subpart B will be enforced nationwide with respect to all HUD-assisted programs and activities.

Subpart C—Program Accessibility

Section 8.20

Section 8.20 proposed a general requirement concerning program accessibility. It provided that each program or activity that receives Federal financial assistance from HUD shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by qualified individuals with handicaps. For the sake of consistency, HUD has revised § 8.20 to follow the general statement concerning program accessibility appearing in the Department of Justice Coordination Regulation. *See* 28 CFR 41.56. Accordingly, § 8.20 has been revised to provide that, except as otherwise provided in §§ 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

Section 8.21

Section 8.21 proposed a program accessibility requirement with regard to non-housing facilities. The section as proposed did not deal separately with new construction, alterations and existing non-housing facilities. For the sake of clarity, the final rule does so. Section 8.21(a) of the final rule provides that newly constructed non-housing facilities shall be readily accessible to and usable by individuals with handicaps. A non-housing facility designed and constructed in accordance with UFAS satisfies this requirement.

Paragraph (b) of § 8.21 provides that alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. A recipient is not required by paragraph (b) to make a non-housing facility accessible if doing so would impose undue financial and administrative burdens on the operation of the recipient's program or activity.

Paragraph (c) of § 8.21 relates to existing non-housing facilities not being altered and requires that recipients operate non-housing programs or activities receiving HUD assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. Paragraph (c) of the final rule also provides, as did paragraph (b) of the proposed rule, that a recipient is not necessarily required to make each of its existing non-housing facilities readily accessible to and usable by individuals with handicaps. Paragraph (c) of the final rule also states that a recipient is not required to take any action that it can demonstrate would result in a "fundamental alteration" in the nature of its program or activity or in "undue financial and administrative burdens."

Most of the 88 comments the Department received on § 8.21 related to the "fundamental alteration" and "undue financial or administrative burden" language in the proposed rule. One group of commenters objected to this language on the ground that a civil right should not be thwarted by the excuse of administrative burden. Other commenters fear that the language is too broad and susceptible of loose interpretation. The "fundamental alteration" and "undue financial or administrative burden" language in the proposed rule was based upon the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and in the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Thus, section 504 does not create an absolute right to access. *See also, Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983). *Davis* has been followed in the circuit courts. *Dopico v. Goldschmidt*, 687 F.2d 644 (2nd Cir. 1982); *American Public Transit Association v. Lewis* (APTA), 655 F.2d 1272 (D.C. Cir. 1981). In addition, the Department of Justice, the agency responsible for coordinating the implementation and enforcement of section 504 throughout the Federal government, has, with one minor exception, adopted this very same standard in its section 504 regulation governing the Department of Justice's Federally conducted programs, 28 CFR 39.150 (Program accessibility: Existing facilities), and in its prototype rule for other agencies' programs, § ____.150. The Department of Justice regulation refers to "undue financial *and* administrative burdens" instead of the "undue financial *or* administrative burdens" language used in HUD's proposed rule. In order to conform the Department's regulation to *Davis* and the Department of Justice section 504 regulation governing federally conducted programs the final HUD rule refers to "undue financial *and* administrative burdens." Moreover, since the "fundamental alteration" and "undue financial and administrative burdens" limitations codify recent case law the Department does not see any legal basis for omitting them from the rule as suggested by some commenters. The Department notes that, since *Davis*, circuit courts have applied the "undue financial and administrative burdens" limitation on a showing that only one of the two "undue burdents" would be created as a result of the modification sought to be imposed under section 504. *See e.g., Dopico v. Goldschmidt, supra; APTA, supra.* However, the Department wishes to stress that the limitations in paragraph (c) are not intended, as some commenters suggested, to render meaningless the accessibility requirements of § 8.21, and they cannot be fairly read as doing so.

Paragraph (c)(3) of § 8.21 follows the Department of Justice Coordination Regulation in setting a time period for compliance. The final rule provides that the recipient shall comply with the requirements of § 8.21 within sixty days of July 11, 1988, except where structural changes in facilities are undertaken. If structural changes are undertaken, they must be made within three years of July 11, 1988, and a transition plan must also be prepared.

Section 8.22

The Department received 338 comments on § 8.22 which proposed accessibility requirements for newly constructed housing. The proposed rule

provided that a minimum of five percent of the total dwelling units in a project containing not less than 15 dwelling units (but not less than one unit in any such project) be made accessible for persons with mobility impairments and an additional two percent be made accessible for persons with hearing and vision impairments. After carefully considering the comments received on the proposed rule the Department has determined, for the reasons set forth below, not to change the five percent accessibility requirement. The Department has also retained the requirement that an additional two percent of the units (but not less than one unit) in a covered project be accessible for persons with hearing or vision impairments. A unit which is accessible for persons with hearing impairments must have an auxiliary (*i.e.*, visual) emergency alarm. The Department has, however, deleted the requirement in the proposed rule that a project have 15 or more units before the five percent requirement takes effect. The Department believes that the five percent (or at least one unit) minimum should apply to all HUD-assisted multifamily housing projects.

A multifamily housing project is defined as a project with five or more dwelling units. This definition is consistent with the definition of multifamily housing project in section 207(c) of the National Housing Act, 12 U.S.C. 1713. A project is defined as the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site. Thus, a multifamily housing project includes, for example, three separate two-family structures (i.e., six dwelling units) which are covered by a single contract for Federal financial assistance, or application for assistance, or are treated as a whole for processing purposes, whether or not the structures are located on a common site.

The five percent requirement has been accepted by the Architectural and Transportation Barriers Compliance Board (ATBCB) as well as the four standard setting agencies (the General Services Administration, the Departments of Housing and Urban Development and Defense, and the United States Postal Service) as satisfying the requirements of the Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157. The Architectural Barriers Act requires certain Federal and Federally funded buildings to be constructed or altered in accordance with accessibility standards. The applicable accessibility standards, called the Uniform Federal Accessibility Standards (UFAS), were issued on August 7, 1984 by the four agencies responsible for setting standards under the Architectural Barriers Act, 49 FR 31528. Specifically, the UFAS requires that five percent of the units (or at least one unit, whichever is greater) be accessible in newly constructed Federally-assisted projects of 15 or more dwelling units. A different percentage may be set by the appropriate Federal agency following a local needs assessment conducted by local governmnent bodies or states under applicable regulations. UFAS ¶4.1.4(11)(b). (As explained in the preceding paragraph, this final rule applies accessibility requirements to projects of five or more units; and the rule allows a higher, but not a lower percentage to be set by HUD as explained below. The Department of Justice requested these two changes. This approach has been followed in § 8.32(d) as well.) The five percent requirement was accepted by the ATBCB and the four standard setting agencies based upon a reading of the legislative history of the Architectural Barriers Act which finds Congressional intent clear that 100 percent accessibility of dwelling units was not contemplated. In the absence of discussion of this issue in the legislative history of section 504, this stands as the Congressional intent with regard to accessibility in residential facilities. Furthermore, the Department of Justice, as the agency responsible under Executive Order 12250 for coordinating enforcement of section 504, has recommended that agencies provide in their section 504 regulations for Federally assisted programs, that with respect to new construction and alterations, compliance with the UFAS shall be deemed compliance with section 504. In addition, Departmental experience has shown the five percent requirement to be adequate.

Section 8.22(b) of the proposed rule would have allowed a sponsor or developer of a multifamily project otherwise subject to § 8.22(a) to request a waiver of the five percent requirement upon demonstrating to the reasonable satisfaction of HUD that the provision of additional accessibile units would exceed the need for such units in the housing market area. Paragraph (c) of § 8.22 of the proposed rule would have allowed HUD to prescribe a higher percentage or number than required by the five percent requirement in § 8.22(b) of the final rule for any area upon request therefor by any State of local government or agency thereof based upon a local needs assessment. Paragraph (b) of § 8.22 of the proposed rule has been deleted. In view of the low cost of making units accessible in newly constructed multifamily housing projects HUD sees no need ever to waive the five percent requirement in the context of new construction. Even if there is no unmet need at the time of construction, there may be a need for additional accessible units over the life of the project. It would be far more expensive to retrofit units at a later date. In addition, an adaptable unit is, for purposes of this rule, equivalent to a fully accessible unit.

Section 8.22(c) of the final rule continues to provide that HUD may prescribe a higher percentage or number than that prescribed in §8.22(b) of the final rule upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD or a need for a higher percentage or number based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such a request, HUD will take into account the expected needs of eligible persons with and without handicaps.

Paragraph (c) of § 8.22 of the proposed rule also provided that, except for group homes or independent living complexes for handicapped persons, in no event shall more than 15 percent of the units in any project be required to be accessible to persons with mobility impairments. A number of commenters objected to this limitation. The Department considered this provision important in order to avoid the segregation of the handicapped. This provision was designed to implement the principle in § 8.4(a) that programs and activities be administered in the most integrated setting appropriate to the needs of qualified individuals with handicaps. However, in view of the comments received, including comments from the Department of Justice, the Department reconsidered the need for a 15 percent ceiling and has deleted this provision from the final rule. The Department believes that a reasonable distribution of accessible dwellings units can be achieved by recipients without imposing on them an absolute ceiling. Recipients

are nonetheless required to administer their programs in the most integrated setting appropriate. In this regard, § 8.26 requires that accessible dwelling units be distributed throughout projects and sites. The 15% ceiling has also been deleted in §§ 8.23 and 8.25 of the final rule for the same reasons.

Section 8.22 has also been revised so that the applicable accessibility standards (i.e., UFAS) are not the *sole* means of designing and constructing accessible units. Section 8.22(a) allows any design to be used as long as the resulting facility is "readily accessible to and usable by individuals with handicaps."

Section 8.23

Section 8.23 of the proposed rule proposed to apply the new construction accessibility standard to facilities containing 25 or more units if the cost of the alterations is 75 percent or more of the replacement cost of the completed facility. Section 8.23 also proposed a more limited accessibility requirement to apply where the 25 units/75 percent of replacement cost threshold is not met. In such cases the proposed rule provided that alterations to common areas be accessible "to the extent feasible." The Department also proposed that alterations to dwelling units where the 25 units/75 percent threshold is not met be made accessible, to the extent feasible, if, as a result of such alterations, the unit could be made accessible for persons of identifiable types or degrees of disability or impairment.

Section 8.23 prompted 290 comments, many of which complained that the 25 units/75 percent standard is so rigorous as to practically eliminate accessibility requirements when altering buildings and suggested that a 10 unit/50 percent standard would be preferable. Many commenters also criticized the section's reliance upon the "replacement cost of the completed project" rather than the fair market value of the completed facility, pointing out their belief that replacement cost is almost always higher than the market value of the building. These comments appear to assume that if the 25 units/75 percent threshold is not met, that there is no accessibility requirement, even though this is not what was proposed.

The Department has carefully considered these comments and has made three changes to § 8.23. First, the Department has lowered the 25 unit threshold to 15 units. Second, even though the Department has retained the 75 percent of replacement cost threshold, HUD has clarified and strengthened the accessibility requirement where the 15 units/75 percent threshold is *not* met. Specifically, § 8.23(b)(1) of the final rule provides that, subject to § 8.23(b)(2) (which is identical to § 8.22(c)), if the 15 units/75 percent threshold in paragraph (a) is *not* met, then, to the maximum extent feasible, alterations to dwelling units in a multifamily housing project (including public housing) must be made to be readily accessible to and usable by individuals with handicaps. Beyond this, if alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of the entire dwelling unit (*e.g.*, alteration of bathroom, kitchen and entryways), then the entire dwelling unit must be made accessible. Once five percent of the dwelling units in a project are accessible, then no additional elements or entire dwelling units need to be made accessible under this paragraph. However, if there is a demonstrated need, HUD may, under § 8.23(b)(2), require that more than 5% of the units being altered be made accessible, to the maximum extent feasible. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities also must, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. This provision is important because in order for a unit to be "accessible" it must be on an accessible route. Otherwise, a mobility impaired person will not be able to get into or out of the unit. The Department has also clarified the phrase "to the maximum extent feasible" so it is clear that a recipient is never required to undertake to provide a degree of accessibility which would impose undue financial and administrative burdens on the operation of the multifamily housing project. At the same time, the Department wishes to stress that when covered alterations are undertaken accessibility must be provided *up to* the point of infeasibility or undue financial and administrative burdens.

The Department does not consider it appropriate to lower the 75 percent of replacement cost threshold to 50 percent because the threshold triggers the accessibility standard applicable to new construction and this standard should apply only to the alteration of existing housing facilities when those alterations are extensive enough to be considered tantamount to new construction. The Department believes that when the cost of alterations is 75 percent or more of the current replacement cost of the completed facility, then the alterations are tantamount to new construction. A lower threshold might well require some recipients to incur extensive costs beyond what is required by section 504. The Supreme Court in *Davis, supra*, made it clear that section 504 does not place such a burden on recipients. In any event, even where the 15 units/75 percent of replacement cost threshold is not met a recipient nonetheless must comply with § 8.23(b).

Twenty-one comments suggested that at least three percent of rehabilitated housing be set aside for persons with mental handicaps. The purpose of § 8.23 is to provide for physical access as required by section 504. Persons with mental handicaps do not require special features in their units and therefore, have, if they are otherwise qualified, access to any unit. As a result, the Department believes that a three percent set aside for this particular type of handicap would be inappropriate.

Section 8.23(b) of the proposed rule provided that the requirements of § 8.23 do not apply to an individual who borrows or receives funds to rehabilitate a dwelling unit in which he or she resides or intends to reside. This paragraph has been deleted from the final rule because the Department, upon further reflection, considers it unnecessary. A person who alters a unit for his or her own use is a beneficiary and not a recipient of Federal financial assistance and therefore is not subject to the requirements of this part.

Section 8.24 (Final Rule)

Section 8.24 of the final rule sets forth program accessibility requirements with regard to existing housing programs. Program accessibility in the public housing program (including multi-family Indian housing) is specifically covered in § 8.25. Additional program accessibility requirements for the section 8 existing housing certificate and housing voucher programs are set forth in § 8.28 of the final rule. Section 8.24 applies to the rental rehabilitation and the section 8 moderate rehabilitation programs. An additional program accessibility requirement for the rental rehabilitation program is in a new § 8.30.

Section 8.24 of the final rule is similar to § 8.22 of the Department's 1978 proposed rule. 43 FR 16658. Section 8.24 also closely follows 28 CFR 41.57 which is part of the Department of Justice Coordination Regulation. Paragraph (a) of § 8.24 provides that a recipient shall operate each existing housing program or activity so, when viewed in its entirety, it is readily accessible to and usable by individuals with handicaps. However, paragraph (a) also states that § 8.24 does not necessary require a recipient to make each of its existings facilities accessible to an usable by

individuals with handicaps. Moreover, a recipient is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If a recipient has insufficient accessible dwelling units, it may need to undertake structural changes within the time period in paragraph (c) in order to comply with § 8.24. In addition, recipients have a continuing obligation to comply with § 8.24. For example, if an otherwise qualified individual with handicaps requiring an accessible unit is next in line for a unit and the only unit available is not accessible, then the recipient must make the unit accessible unless it can demonstrate that doing so would result in undue financial and administrative burdens.

Paragraph (b) provides that a recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with § 8.24. However, in choosing among available methods for achieving program accessibility, recipients must give priority to those methods that offer housing to qualified individuals with handicaps in the most integrated setting appropriate, i.e., in a setting that enables qualified individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Paragraph (c) sets a time period for achieving compliance with § 8.24. Recipients must comply with the requirements of § 8.24 within sixty days of July 11, 1988, except where structural changes are undertaken. Except in the public housing program, if structural changes are undertaken they must be made within three years of July 11, 1988. In a public housing program where structural changes in facilities are undertaken, such changes must be made within the timeframes established in § 8.25(c), which is discussed below.

If structural changes are to be undertaken to achieve program accessibility, a recipient (except as provided in § 8.25(c)) is required by paragraph (d) to develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan must be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps.

Proposed section 8.24 (Final Rule section 8.25)

Section 8.25 of the final rule sets forth the program accessibility requirements for the public housing program, including multi-family Indian housing. Section 8.25 of the final rule corresponds to § 8.24 of the proposed rule.

Paragraph (a) of § 8.24 of the proposed rule proposed that newly constructed public housing be required to comply with the standards applicable to residential structures, under 24 CFR 40.4 (i.e., UFAS). Paragraph (a)(1) of § 8.25 of the final rule provides more generally that the requirements of § 8.22 shall apply to all newly constructed public housing. Consistent with other sections of the final rule, § 8.32 of the final rule makes it clear that compliance with UFAS is not the *sole* means of achieving accessibility. Of course, public housing programs must also comply with the Architectural Barriers Act and the requirements of 24 CFR Part 40 in addition to the requirements of this part.

Public housing is not only developed through new construction; it is also developed through the rehabilitation of existing housing and through the purchase of existing properties. Existing public housing also is modernized from time to time. Paragraph (a)(2) of § 8.25 of the final rule provides that § 8.23, relating to the alteration of existing housing facilities, applies to public housing acquired through rehabilitation and to the alteration of public housing. In addition, alterations to public housing projects are covered by the Architectural Barriers Act. *See also*, 24 CFR Part 40.

Paragraph (a)(3) of § 8.25 provides that in developing public housing through the purchase of existing properties PHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.

Most of the comments the Department received on § 8.24 of the proposed rule objected to the provision in paragraph (c) (relating to the modernization of public housing) that PHAs not be required to make more than five percent of the units covered by any modernization projects accessible. These commenters viewed this as a "ceiling" applying to the construction and alteration of all public housing and noted that the figure in the proposed rule for other HUD-assisted housing was 15 percent. However, paragraph (c) of proposed § 8.24 dealt only with public housing covered by a modernization program and did not propose to set a five-percent ceiling on the construction and alteration of public housing. Furthermore, after careful consideration and consultation with the Department of Justice, the Department has eliminated the five-percent ceiling which it proposed in connection with modernization programs. This change is described in more detail below.

Section 8.25(a)(1) of the final rule (as did § 8.24(a) of the proposed rule) makes § 8.22 applicable to all newly constructed public housing. Section 8.22 of the final rule in turn allows up to 100 percent of the units (provided there is evidence of a need greater than five percent) in any project to be made accessible to persons with mobility impairments. Section 8.23 of the final rule applies to public housing units which are being altered (including public housing developed through rehabilitation) by virtue of § 8.25(a)(2) of the final rule. Section 8.23 in turn allows that more than five percent of the units being altered or modernized be made accessible if there is a need as described in § 8.23(b)(2).

Paragraphs (b) and (c) of § 8.25 of the final rule revise and clarify paragraphs (b) and (c) of § 8.24 of the proposed rule. Paragraphs (b) and (c) of § 8.25 of the final rule set forth accessibility requirements with regard to existing public housing, whether or not the dwelling units are covered by a modernization program. Paragraph (b) of § 8.25 provides simply that the requirements of § 8.24(a) shall apply to public housing programs. PHAs are thus required by § 8.25(b) to operate each of their programs or activities so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This does not necessarily mean that a PHA must make each of its existing facilities readily accessible to and usable by individuals with handicaps. A PHA is also not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or in undue financial and administrative burdens.

Paragraph (c) of § 8.25 requires each PHA to assess, as soon as possible, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation, Section 8 Existing Housing or Housing Vouchers). If the needs assessment shows no need for additional accessible dwelling units or that the need will be met within four years through other means, such as new construction and/or alterations otherwise contemplated, no further action is required by the PHA. PHA needs assessments may be reviewed by HUD in connection with section 504 compliance reviews and complaint investigations. If, on the other

hand, the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The needs assessment and transition plan, if one is necessary, shall be completed as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA is required to complete structural changes necessary to achieve program accessibility as soon as possible but in any event within four years of July 11, 1988. However, the final rule allows up to two extensions of time. First, the Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four-year period for a period not to exceed two years on a case-by-case determination by both Assistant Secretaries that compliance with that period would impose undue financial and administrative burdens on the operation of the recipient's public housing program. Second, the Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. If a PHA for any reason fails to achieve program accessibility within the timeframes in § 8.25(c) it is *not* thereby relieved of its responsibility to achieve program accessibility as expeditiously as possible. The transition plan must be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. The provision in § 8.24(c) of the proposed rule that PHAs shall not be required to make more than five percent of the units covered by any modernization project accessible has been deleted. If a properly done needs assessment demonstrates a need for more accessible units they may be provided. The 15 percent project cap also has been deleted to allow accessible units to be provided as needed.

Paragraph (c) of § 8.25 of the final rule also requires a PHA to describe in detail the methods that will be used to make its facilities accessible. Section 8.25(c) states that a PHA may, if necessary, provide in its transition plan that it will seek HUD approval, under 24 CFR Part 968, of a modernization program to meet the needs of eligible individuals with handicaps.

A large number of commenters were critical of the portion of § 8.24(c) of the proposed rule which allows a PHA to request a waiver of the requirement to make additional units accessible if the alterations required to do so would result in a determination under 24 CFR 968.3 that the project is not financially feasible. This provision has been deleted from the final rule. However, it should also be noted that a PHA seeking modernization funds in whole or in part for the purpose of making units accessible must meet all of the requirements applicable to the modernization program.

One commenter stated that the requirement in § 8.24 of the proposed rule that PHAs assess the needs of current tenants and applicants is inadequate because dissemination of information on the availability of accessible units is not a reliable indicator of real demand. Paragraph (c) of § 8.24 of the proposed rule specifically recognized this problem by proposing that if a PHA determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified handicapped persons on the PHA's waiting list is not fairly representative of the number of persons in the area, the PHA's assessment shall be required to include the needs of eligible qualified handicapped persons in the PHA's jurisdiction. Paragraph (c) of § 8.25 of the final rule retains this requirement and strengthens it by allowing either HUD *or* a PHA to determine that information regarding the availability of accessible units has not been communicated sufficiently. Such a determination by either HUD or the PHA requires the PHA to conduct a broader needs assessment than it would otherwise have to conduct.

Proposed section 8.25 (Final Rule section 8.26)

Section 8.25 of the proposed rule (§ 8.26 of the final rule), which dealt with the distribution of accessible dwelling units, was the subject of 215 comments. Section 8.26 of the final rule, which is substantially unchanged from the proposed rule, applies the "most integrated setting" concept of § 8.4(d), as well as the prohibition of § 8.4(b)(viii) against limiting the enjoyment of opportunities by a qualified individual with handicaps, solely on the basis of handicap, to the housing context.

A majority of the commenters objected to the provision in the section which provides for the distribution of accessible units throughout projects and sites "subject to reasonable health and safety requirements." These commenters consider this provision to be vague and fear that it will be applied arbitrarily. The purpose of this provision is to protect the interests of qualified individuals with handicaps. For example, it would not be reasonable to distribute all of the accessible units in a particular high-rise project on an upper level floor because this could create a safety hazard for tenants with mobility impairments in the event of a fire or some other emergency. On the other hand, this provision does not allow the unnecessary segregation of qualified individuals with handicaps. Rather, the section requires that, to the maximum extent feasible, accessible units be distributed throughout projects and sites.

A majority of the commenters on this section also criticized the final sentence of § 8.25 of the proposed rule (§ 8.26 of the final rule) which proposed that an elevator not be required in any multifamily housing project solely for the purpose of permitting the location of accessible units above or below the accessible grade level. These commenters interpreted this sentence as *prohibiting* the provision of an elevator for the sole purpose of providing access. However, the final sentence of § 8.26 of the final rule does not contain a complete prohibition against the provision of an elevator. It states only that § 8.26 shall not be construed as *requiring* the provision of an elevator solely for the purpose of allowing a broader distribution of the accessible units to be included in a particular project. A recipient may choose to provide an elevator in a particular project for any number of reasons. However, § 8.26 of the final rule cannot be used to justify the provision of an elevator, because the Department believes that an acceptable distribution of accessible dwelling units can be achieved without incurring the considerable additional expense of providing an elevator. It should also be noted that § 8.26 of the final rule does not affect the number of accessible units to be in a particularl project. Section 8.26 deals only with *the distribution* of accessible dwelling units.

Proposed section 8.26 (Final Rule section 8.27)

Sixty-two (62) of the comments received on the proposed rule are in reaction to § 8.26 (§ 8.27 of the final rule) which requires owners and managers of multifamily projects having accessible units to adopt suitable means to assure that information regarding the availability of accessible units reaches

qualified handicapped persons and to take steps to maximize the utilization of accessible units by qualified individuals with handicaps. Twenty-one of these comments urged that three percent of the Federally financed new or remodeled housing be set aside for the mentally handicapped. The Department has not adopted this suggestion for the reasons explained in response to similar comments received on § 8.23. Specifically, no set-aside is needed for mentally handicapped persons because mentally handicapped persons are, if otherwise qualified, eligible and able to live in any unit.

Other commenters considered the section vague suggesting that HUD establish procedures that will more clearly promote efficient use of the units. The proposed rule would have allowed an owner or manager to offer an accessible unit to an eligible qualifed applicant on the waiting list requiring the accessibility features of the vacant unit "provided that such preference is not likely to delay unreasonably the availability of a unit for the applicant at the head of the waiting list." After carefully reviewing the rule in light of these comments the Department has revised § 8.26 of the proposed rule in order to maximize the use of accessible units by otherwise qualified individuals with handicaps requiring the features of those units. The final rule (§ 8.27) provides that when an accessible unit becomes vacant it *shall* be offered first to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features. If no such occupant exists, the unit shall be offered to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit. Therefore, unlike the proposed rule, the final rule requires an owner or manager to offer a vacant accessible unit to a person requiring the features of the unit unless no otherwise qualified individual with handicaps has applied for or requested such a unit. In light of this change, designed to maximize the occupancy of accessible units with persons requiring the features of these units, the Department has deleted the second sentence in § 8.26(b) of the proposed rule. Section 8.26(b) of the proposed rule stated that, if reasonable efforts have been made to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, an owner or manager shall not be required "to hold an accessible unit vacant for a longer than normal period" in order to locate an eligible individual with handicaps having disabilities or impairments requiring the accessibility features of the vacant unit. This provision would have been difficult to apply and enforce because it would not have been clear how long an owner or manager would have had to hold a unit vacant. Moreover, this provision is no longer necessary in view of the requirement in the final rule that an owner or manager fill a vacant accessible unit with an individual or family needing its features, regardless of that individual of family's position on the waiting list. Finally, § 8.27(b) of the final rule continues to provide, as did § 8.26(b) of the proposed rule that, when offering an accessible unit to an applicant not having handicaps requiring the accessibililty features of the unit, the owner or manager *may* require the applicant to agree (and *may* incorporate this agreement in the lease) to move to a non-accessible unit when available.

Proposed section 8.27 (Final Rule section 8.28)

Section 8.27 of the proposed rule, which proposed section 504 requirements for the Section 8 Existing Housing Certificate Program and the Housing Voucher Program, has been renumbered as § 8.28 of the final rule. This section has not been substantively changed from the proposed rule, except that it now applies to the Housing Voucher program as well as to the Section 8 certificate program; it requires that, where necessary, recipients assist families with an individual with handicaps to find an accessible unit; and it requires assurances of nondiscrimination in recipients' contracts with participating owners.

This section was the subject or 207 comments. Most of these comments criticized the section believing that it exempted participating owners from program access requirements under the Section 8 and Housing Voucher programs. The Department has carefully considered these comments and has found that they have some merit. The Department believes that as revised, § 8.28 of the final rule, in conjunction with §§ 8.24 and 8.26, satisfies the program accessibility mandate of section 504 with regard to these programs. Neither the proposed rule nor the final rule "exempts" the Section 8 Existing Housing Certificate and Housing Voucher programs from section 504.

After thorough consideration, the Department has clarified that entities (usually PHAs) receiving annual contributions from HUD are recipients and that owners receiving housing assistance payments from a recipient are contractors with respect to units used under these programs, not recipients. Thus, in addition to being subject to the specific requirements contained in § 8.28 of the final rule, a PHA or other entity receiving annual contributions directly from HUD is, as a recipient, subject to the nondiscrimination requirements of subpart A of the rule. The recipient must ensure that it operates in a nondiscriminatory manner in its dealings with participating owners and must insist that those owners make available to tenants units within the funded program on a nondiscriminatory basis. Section 8.4(b)(1). Thus, a PHA cannot deny the participation of owners in the Section 8 certificate or housing voucher programs on the basis of handicap, and can insist by explicit contractual provision, that owners, as a condition of their participation, act in like manner as to each of its federally subsidized units.

The Department has strengthened the rule by explicitly applying the program accessibility provisions of §§ 8.20, 8.24, and 8.26 to recipients covered by § 8.28. Thus, the recipient (usually a PHA) must ensure that its program, when viewed in its entirety, is accessible; this will entail analyzing the needs of eligible tenants and taking steps, short of those that would impose undue burdens or cause a fundamental alteration in the nature of the program or activity, to make available an adequate number and variety of accessible units consistent with §8.26. Section 8.28 imposes numerous outreach responsibilities in furtherance of this end; in addition, HUD will expect a PHA to request an exception to the Fair Market Rents under 24 CFR 882.106(a) when necessary to allow section 8 certificate holders to rent accessible units (§ 8.28(a)(5)) or to take other steps to increase its accessible housing stock if necessary. The Department has added a new § 8.28(b) requiring that recipients obtain assurances of nondiscrimination from participating owners.

It is the responsibility of the PHA, as recipient, to ensure that an owner-contractor is carrying out the PHA's program in a manner consistent with the nondiscrimination requirements of this regulation, and to terminate from the program those who are not doing so, as well as to ensure that the PHA is operating the program as a whole in compliance with section 504. HUD will enforce both elements of the PHA's obligation under section 504.

Proposed section 8.28 (Final Rule section 8.29)

There were ten comments on § 8.28 of the proposed rule (§ 8.29 of the final rule) which deals with the impact of section 504 on four homeownership programs: Sections 235(i) and 235(j), Turnkey III and Indian Mutual Self-Help Programs. One commenter interpreted § 8.28 of the proposed rule as proposing to allow a housing unit to be made accessible only if the buyer himself is handicapped. This commenter states that accessibility should also be requestable if other members of the family are disabled. Although § 8.29 of the final rule necessarily requires that the request that a housing unit be made accessible come from the buyer, the buyer's request may be based upon there being a handicapped person who will live in the house. The buyer himself need not be handicapped. The final rule has been revised to make this clear.

Other commenters felt that § 8.28 of the proposed rule reinforces an incorrect message that creating accessible or adaptable housing is expensive and difficult and suggested that the section either be omitted from the regulation or revised. The omission of § 8.28 from the final rule would limit or make more difficult the participation of qualified individuals with handicaps in the four homeownership programs covered by the section and would be inconsistent with the purposes of section 504. On the other hand, requiring as some commenters suggested that all housing units be made accessible would cause an increase in the cost of homeownership to all participants, even to those who do not need an accessible dwelling. The Department believes this would go beyond what is required by section 504.

Section 8.30 (Final Rule)

Section 8.30 of the final rule is new and deals with the Department's rental rehabilitation program. Under the rental rehabilitation program HUD makes grants to cities, urban counties and States to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. In order to promote accessibility in the rental rehabilitation program and to encourage an increase in the nation's accessible housing stock § 8.30 requires each grantee or State recipient in the rental rehabilitation program to give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps. This priority is subject and subordinate to the priority in 24 CFR 511.10(1) for units in substandard condition that are occupied by very low-income families. The priority in § 8.30 is also subject to all of the other requirements in 24 CFR Part 511.

Proposed section 8.29 (Final Rule section 8.31)

Section 8.29 of the proposed rule contained accessibility requirements regarding historic facilities. The section as revised appears as § 8.31 of the final rule. This section of the rule prompted 29 comments. The National Trust for Historic Preservation praised this section of the proposed rule as allowing some flexibility where historic properties are involved. A number of other commenters were critical of the section. One commenter read the section as creating a "blanket exemption" for historic facilities. This is not the case. Historic facilities must be made accessible unless such accessibility would substantially impair the historic features of the property or result in undue financial and administrative burdens. Several commenters suggested deletion of the "undue financial and administrative burdens" language. As previously stated, the Department believes that this language is appropriate in light of the Supreme Court decision in *Davis*.

The wording of the historic facilities section has been changed in a number of respects from the proposed rule. First, the definition of "historic properties" has been deleted from the section and added to § 8.3 ("*Definitions*"). Second, the proposed rule contained a requirement that if historic facilities become subject to alteration to which this part applies and the provision of accessibility would substantially impair the historical or architectural integrity of the property, comments shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and 36 CFR Part 800 prior to commencement of alterations. Since the comment requirement is contained in UFAS § 4.1.7(1), it has been deleted from the section in favor of a reference to the applicable section of the UFAS for all programs except the Urban Development Action Grant (UDAG) program. In the case of the UDAG program the historic preservation requirements at 36 CFR Part 801 shall apply. These requirements relate specifically to the UDAG program. Third, the Department has added to the definitions section a definition of "substantial impairment." Substantial impairment is defined to mean a significant loss of the integrity of finished materials, design quality, or special character resulting from permanent alteration.

Proposed section 8.30 (Final Rule section 8.32)

Section 8.30 of the proposed rule would have made the American National Standards Institute ANSI A117.1–1980 (ANSI) the accessibility standard for housing facilities or units to which HUD's Minimum Property Standards apply, subject to any conflict with a specific provision of the Minimum Property Standards, in which case the latter would have governed. Under the proposed rule, ANSI would have been the standard for non-housing accessibility and for housing to which the Minimum Property Standards are not applicable. However, HUD stated in the preamble of the proposed rule that "[u]pon issuance of Uniform Federal Accessibility Standards by the standard-setting agencies under the Architectural Barriers Act, the Department will consider the extent to which those standards should be adopted for Section 504 compliance purposes." 48 FR 22480. The Uniform Federal Accessibility Standards were issued by the four agencies (including HUD) responsible for establishing standards under the Architectural Barriers Act of August 7, 1984 (49 FR 31528).

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be constructed or altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and of Housing and Urban Development, and the U.S. Postal Service) to prescribe the accessibility standards. In addition, section 502 of the Rehabilitation Act of 1973 established the Architectural and Transportation Barriers Compliance Board (ATBCB). In 1978, the Rehabilitation Act was amended to require the ATBCB to issue minimum guidelines and requirements for the standards to be issued by the standard-setting agencies. These minimum guidelines were published on August 4, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190. *See* 24 CFR Part 40 for HUD and Subpart 101–19.6 for GSA. In order to ensure uniformity, the UFAS was designed to be consistent with the ATBCB's minimum guidelines and requirements as well as with the ANSI standards. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The ANSI standards

are frequently used in private practice and by State and local governments.

As previously explained with regard to the five percent accessibility requirement, the Department of Justice, as the agency responsible under Executive Order 12250 for coordinating enforcement of section 504, has recommended that agencies provide in their section 504 regulations for federally assisted programs that, with respect to new construction and alterations, compliance with the UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alterations requirements under section 504 are also subject to the Architectural Barriers Act, government-wide reference to the UFAS would diminish potential conflict between standards enforced by the responsible funding agencies under the two statutes. In addition, compliance with the UFAS by Federal agencies and States will reduce potential conflicts where a building is subject to the section 504 regulations of more than one Federal agency and also where it is subject to State or local accessibility requirements as well.

Apart from the Justice Department recommendation, the Department received many comments in response to the proposed rule suggesting that the UFAS be made the standard for purposes of section 504 compliance in the final rule. A number of commenters also expressed confusion regarding the relationship between the Minimum Property Standards (MPS) and the ANSI standards. In an effort to promote consistency the Department, on August 11, 1986 revised the MPS to reference the UFAS rather than the ANSI standards as the design and construction standard to be used where the MPS apply. (51 FR 28696, 98).

For these reasons, § 8.30 of the proposed rule has been revised (and renumbered as § 8.32) to provide that the design, construction, or alteration of buildings in conformance with sections 3–8 of UFAS shall be deemed to comply with §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. In addition, the rule allows departures from particular technical and scoping requirements of UFAS by the use of other methods so long as the other methods employed result in substantially equivalent or greater access to and usability of the building in question. In addition to complying with UFAS, the alteration of housing facilities must also comply with the additional scoping requirements contained in this part.

Paragraph (b) of § 8.32 of the final rule, at the suggestion of the Department of Justice, modifies the effect of UFAS § 4.1.6(1)(g), which provides an exception to UFAS § 4.1.6, *"Accessible buildings: alterations."* Section 4.1.6(1)(g) of the UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly, after the development of specific UFAS provisions for housing alterations and additions, the Justice Department believes that this UFAS provision could be read to exempt alterations of privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal government for subsidized housing programs. This exception, however, would not be appropriate under section 504, which protects beneficiaries of housing provided as part of a Federally assisted program. Consequently, paragraph (b) of § 8.32 of the final rule provides for purposes of this section, § 4.1.6(1)(g) of the UFAS shall be interpreted to exempt from the requirements of the UFAS only spaces that, because of their intended use, will not require accessibility to the public or handicapped residents or employees.

Paragraph (c) of the final rule makes it clear that § 8.32 does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. Such an alteration would go beyond what is required by section 504.

UFAS § 4.1.4(11) contains scoping provisions for newly constructed housing. The UFAS requires for Federally assisted housing that five percent of the total, or at least one unit, whichever is greater, be accessible in projects of 15 or more dwelling units. Section 8.22 of the final rule does not contain the 15 or more dwelling unit minimum. Accordingly, paragraph (d) of § 8.32 of the final rule provides that UFAS § 4.1.4(11) shall not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

Under paragraph (e) of § 8.32 of the final rule, the accessibility requirements for facilities in Subpart C would apply to facilities that are designed, constructed or altered after July 11, 1988. The date of construction or alteration is defined as the date bids are solicited. This language in the final rule more closely follows the language in the DOJ Coordination Rule than did the language in the proposed rule. However, the Department is making an exception for the Urban Development Action Grant (UDAG) program. For the UDAG program, the Department continues to believe that the appropriate point to make the accessibility requirements effective is the date applications are submitted. The federal grant under the UDAG program is awarded only upon a determination that the project would not be made without the grant. The grant amount is the least amount necessary to make the project feasible based upon projected costs. Making the accessibility requirements apply to UDAG projects which have not begun construction or alteration before July 11, 1988 would result in a change to the HUD approved facility and budget with the possibility that the grant would not be sufficient to cover any changes necessitated by the accessibility requirements and the project would become infeasible. Therefore, the accessibility requirements are made applicable to applications submitted after July 11, 1988, so that UDAG applicants will know of the requirements and include all necessary costs in the application. However, if the UDAG application was submitted before July 11, 1988, the applicable accessibility provisions in subpart C apply to the maximum extent practicable, as determined by the Department.

Section 8.33 (Final Rule)

Section 8.33 of the final rule (*"Housing adjustments"*) at the suggestion of the Department of Justice adds a new paragraph to clarify section 504 obligations applied to housing policies and practices. These obligations are separate from, and in addition to, those imposed by §§ 8.22–8.31. Section 8.33 requires recipients of HUD assistance to make such modifications to its housing policies and practicies as are necessary to ensure that they do not discriminate, on the basis of handicap, against qualified individuals with handicaps in Federally assisted programs or activities. In certain circumstances a recipient may be required to adjust its policies and practices in order to comply with the provisions of this part. For example, a recipient might need to transfer a tenant with a heart condition to a ground-floor apartment if medical reasons would require such a transfer so that benefits of the housing can remain available or permit a tenant with a hearing impairment to install light signalers so that the tenant may be notified of a caller and answer the door. It should be emphasized that in all cases housing requirements that can be

demonstrated by the recipient to be essential to its housing program need not be adjusted in accordance with this subpart if the adjustments would result in a fundamental alteration in the nature of a program or undue financial and administrative burdens.

Subpart D—Enforcement

Two hundred ninety-nine (299) general comments were received on Subpart D. The largest number of these general comments (161 form comments) are critical of the subpart because it does not impose a self-evaluation requirement on recipients. Consistent with these comments, the Department of Justice Coordination Regulation provides that each agency regulation should include a requirement that recipients conduct a self-evaluation of their compliance with section 504. 28 CFR 41.5(b). Consequently, the Department is adding a self-evaluation requirement to the final rule.

Section 8.51 (Final Rule)

Under § 8.51 of the final rule each HUD recipient is required, within one year of July 11, 1988, to evaluate its current policies and practices to determine whether they meet the requirements of this part. Any policies and practices that do not meet the requirements of this part must be modified. Furthermore, the recipient must take appropriate corrective steps to remedy any discrimination revealed by the self-evaluation. This three-part self-evaluation is to be conducted following consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps. Finally, recipients with 15 or more employees must maintain on file, make available for public inspection, and provide to the responsible civil rights official upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made and of any remedial steps taken. The requirements of § 8.51 should not be confused with the physical accessibility requirements of §§ 8.24 and 8.25. Section 8.51 relates to policies and practices and not physical accessibility.

Section 8.50

Section 8.50, requiring the submission of assurances, has been revised in order to clarify the section.

Proposed section 8.51 (Final Rule section 8.54)

Section 8.51 of the proposed rule would have required recipients to take appropriate steps to notify relevant persons and organizations that it does not discriminate on the basis of handicap in its HUD-assisted programs and activities. The notice section in the final rule is more specific in its requirements. It appears as § 8.54 of the final rule. Paragraph (a) of § 8.54 requires recipients employing 15 or more persons to take appropriate initial and continuing steps to notify relevant parties that it does not discriminate on the basis of handicap in violation of this part. The paragraph goes on to describe what the notification must state. The Department believes it would be unduly burdensome to impose a notification requirement on recipients employing fewer than 15 persons.

Paragraph (b) of § 8.54 provides that if a recipient publishes or uses recruitment materials or publications containing general information that it makes available to relevant parties it shall include in those materials or publications a statement of the policy described in paragraph (a).

Paragraph (c) requires that recipients ensure that members of the population eligible to be served or likely to be affected directly by a HUD-assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program.

Section 8.52 (Final Rule)

Section 8.52 of the final rule, relating to remedial and affirmative action, is new. It was added at the suggestion of the Department of Justice. It is patterned after the comparable provision of the section 504 regulation of the Department of Health and Human Services. 45 CFR 84.6.

Paragraph (a) of § 8.52 deals with remedial action. Generally, it provides that if the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient is obligated to take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination. Furthermore, the responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (1) with respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or (2) with respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

Paragraph (b) of § 8.52 of the final rule relates to voluntary action that a recipient can take where the responsible civil rights official has not found that it has discriminated against persons on the basis of handicap in violation of section 504 or this part. Under § 8.52(b) a recipient may take nondiscriminatory steps to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.

Section 8.53 (Final Rule)

Section 8.53 of the final rule is also new and also was added at the suggestion of the Department of Justice. Paragraph (a) requires each recipient that employs fifteen or more persons to designate at least one person to coordinate its efforts to comply with this rule.

Paragraph (b) of § 8.53 of the final rule requires recipients employing fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this rule. However, such procedures need not be established with respect to complaints from employees or from applicants for admission to housing covered by this part. Applicants who are denied admission to HUD-assisted housing generally have a right to be notified of the reason for their ineligibility and have an opportunity to have the decision reviewed. *See, e.g.*, 24 CFR 880.603(b)(3) (Section 8 New Construction); § 881.603(b)(3) (Section 8 Substantial Rehabilitation); § 882.216 (Section 8 Existing Housing); § 960.207 (Public Housing). These procedures are available in addition to the complaint procedures provided elsewhere in this subpart.

* * * * *

Throughout subparts D and E of the proposed rule, the term "responsible Department official" was used to refer to individuals who will perform various different functions. For purposes of clarification the Department has substituted the following terms to identify the individuals. "Award official" is the official that has been assigned principal responsibility for administration of the law extending Federal financial assistance (e.g., the Assistant Secretary for Housing, the Assistant Secretary for Public and Indian Housing and the Assistant Secretary for Community Planning and Development). The "responsible civil rights official" is the official within HUD designated to oversee the civil rights

functions. The "responsible civil rights official" will work closely with "award officials" in order to ensure compliance with this rule. "Reviewing civil rights official" is the person within HUD assigned to accept appeals from determinations of the responsible civil rights official.

Proposed section 8.52 (Final Rule section 8.55)

Section 8.52 of the proposed rule related to compliance information. It appears as § 8.55 of the final rule. A number of editorial changes were made. They do not affect the substance of the rule.

Proposed section 8.53 (Final Rule section 8.56)

The Department has substantially revised § 8.53 of the proposed rule, dealing with the conduct of investigations, in the final rule. It appears as § 8.56 of the final rule. At the second meeting of the HUD Section 504 Task Force with representatives of major organizations representing disabled persons it was suggested that the Department review the Department of Justice Federally-conducted rule (28 CFR Part 39) to see if any of its provisions should apply to Federally-assisted programs. In reviewing the Justice Department rule the Department found that 28 CFR 39.170, which establishes a detailed complaint processing procedure, contains a number of provisions which would be appropriate and useful in the context of this rule. Accordingly, the Department has amended § 8.53 of the proposed rule.

Paragraph (a) of § 8.53 of the proposed rule, providing for periodic compliance reviews, has been clarified. Paragraph (a) of § 8.56 of the final rule provides that the responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and, where he or she has a reasonable basis to do so, may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. Such programmatic matters may include, but are not limited to, circumstances where the recipient has structural changes planned or underway and failure to review on-site could result in completion of construction without required accessibility. The final rule also requires that HUD initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed, the programs affected by the review, and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review.

Paragraph (b) of the final rule requires HUD to make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.

Paragraph (b) of the proposed rule (paragraph (c) of the final rule), setting forth the procedures for filing complaints with the Department, has been expanded in line with 28 CFR 39.170(d). Paragraph (c)(1) of the final rule provides that any person who believes that he or she has been subjected to discrimination prohibited by this part may file a complaint. In addition, any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint.

Paragraph (c)(2) of the final rule ("*Confidentiality*") provides that the responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purpose of this part, including the conduct of any investigation, hearing, or proceeding under this part.

Paragraph (c)(3) of the final rule ("*When to file*"), like the proposed rule, requires that complaints be filed within 180 days of the alleged act of discrimination unless this time limitation is extended by the responsible civil rights official. The final rule clarifies that an extension may be granted for good cause shown. Good cause could be found, for example, (1) if the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) if the complainant could not reasonably be expected to know of the act or event said to be discriminatory. The final rule also clarifies that a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any complaint delivered other than by mailing shall be deemed filed on the date it is received by the Department.

Paragraph (c)(4) ("*Where to file complaints*") provides that complaints may be filed with any HUD office. As a general matter complaints will be investigated by the HUD Regional Office having jurisdiction over the place where the discrimination is alleged to occur.

Paragraph (c)(5) ("*Contents of complaints*") specifies that a complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part and a description of the recipient's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of this part.

Paragraph (c)(6) ("*Amendments of complaints*") allows for the amendment of complaints at any time. Further, amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to have been made as of the original filing date.

Paragraph (d) of the final rule ("*Notification*") adds a requirement that the responsible civil rights official notify the complainant and the recipient of HUD's receipt of the complaint within ten (10) calendar days. Time limitations have been added here and throughout § 8.56 of the final rule as suggested by a number of commenters.

Paragraph (e) of the final rule ("*Complaint processing procedures*") provides that after acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures. A preliminary investigation may be necessary in order to determine if HUD has jurisdiction to accept the complaint. Normally, this determination will be made by the responsible civil rights official within 20 calendar days of acknowledgement of the complaint. If the complaint is accepted, the responsible civil rights official will notify the complainant, the award official and the recipient. The applicant or recipient will then have an opportunity to respond to the complaint in writing within 30 calendar days of receiving it. The responsible civil rights official is authorized to attempt to resolve complaints informally whenever possible.

If the investigation reveals no violation of this rule, paragraph (f) of the final rule ("*Dismissal of complaint*") provides that the responsible civil rights official will dismiss the complaint and notify the complainant and recipient.

If an informal resolution of the complaint is not reached, paragraph (g) of the final rule ("*Letter of findings*") requires the responsible civil rights official, within 180 days of receipt of the complaint, to notify the recipient and the complainant of the results of the investigation.

Paragraph (h) of the final rule (*"Right to review of the letter of findings"*) creates a right to review the letter of findings within 30 days of its receipt provided there is supplementary information. The reviewing civil rights official will, within 60 days of the request for review, either sustain or modify the letter of findings. If neither party requests that the letter of findings be reviewed, formal written determination of compliance or noncompliance will be issued within fourteen (14) calendar days of the expiration of the period within which a request for review of the letter of findings could have been made.

Paragraph (i) of the final rule (*"Voluntary compliance time limits"*) allows a recipient ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under § 8.57.

Paragraph (j)(1) of the final rule (*"Information resolution/voluntary compliance"*) states the Department's policy of encouraging the informal resolution of matters and provides that the responsible civil rights official may attempt to resolve a matter through informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil rights official must then attempt to resolve the matter by informal means.

Paragraph (j)(2) of the final rule (*"Objectives of informal resolution/voluntary compliance"*) states that in attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and, where appropriate, obtain assurance that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violation of this part or the prevention of such violation in the future. The terms of an informal resolution shall be reduced to a written voluntary compliance agreement, to be signed by the recipient and the responsible civil rights official. The purpose of voluntary compliance agreements is to protect the interest of the complainant, other persons similarly situated, and the public interest.

The following are examples of the types of remedies that may be sought, as appropriate, in order to protect the interest of the complainant:

(1) Equitable monetary relief (e.g., out-of-pocket expenses; backpay);

(2) The dwelling at issue or the next available one;

(3) The job at issue or the next available one;

(4) A reasonable accommodation; and

(5) Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the complainant.

The following are the types of provisions that the Department will seek, as appropriate, for the public interest:

(1) Elimination of violations of this part;

(2) Prevention of future violations of this part (e.g., through training);

(3) Changes in policy;

(4) Reporting requirements; and

(5) Monitoring and enforcement activities.

Paragraph (k) prohibiting intimidatory or retaliatory acts is unchanged (except for minor editorial changes) from the proposed rule where it was designated paragraph (e).

Proposed section 8.54 (Final Rule section 8.57)

Section 8.54 of the proposed rule relating to the procedure for effecting compliance appears as § 8.57 of the final rule. The section has not been substantially changed.

Proposed section 8.55 (Final Rule section 8.58)

A typographical error in § 8.55 of the proposed rule dealing with hearings has been corrected. Section 8.55 of the proposed rule appears as § 8.58 of the final rule. The second paragraph in paragraph (d)(2) of § 8.58 of the final rule now provides that the "administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence." Other minor editorial changes have also been made to the section.

Proposed section 8.56 (Final Rule section 8.59)

Section 8.56 of the proposed rule dealt with decisions and notices. The section appears as § 8.59 of the final rule. A new paragraph realting to judicial review has been added to the section. Paragraph (g) of § 8.59 of the final rule provides that a final decision rendered under § 8.58 constitues final action under section 704 of the Administrative Procedure Act (5 U.S.C. 704) and, to the extent it is not barred by other provisions of law, such a final decision is subject to judicial review under section 706 of the Administrative Procedure Act (5 U.S.C. 706). Consequently, paragraphs (g) and (h) of the proposed rule appear as paragraphs (h) and (i) of the final rule. Minor editorial changes were also made throughout the section. In addition, the final rule more clearly identifies the HUD officials involved in the decision notification process.

Subpart E—Practice and Procedures for Hearings

No comments were received on subpart E. Editorial changes were made throughout the subpart. All but two of these changes clarify the subpart but do not alter it substantively.

Section 8.62(b)(3) of the proposed rule would have allowed any amicus curiae to request that the presiding officer propound specific questions to witnesses. The Department has deleted this provision in the final rule. Upon further consideration, the Department does not consider it appropriate for an amicus curiae to be able to participate in a hearing to this extent. However, the final rule (§ 8.62(b)(2)) continues to provide that an amicus curiae may submit a statement of position to the administrative law judge before the hearing and may submit a brief on each occasion that a decision is to be made or a prior decision is subject to review.

Subpart E also has been revised to provide that the presiding officer at a hearing will always be an administrative law judge. Given the importance of such hearings, the Department believes that the hearing should always be conducted by an administrative law judge.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The regulation allows recipients to adopt the least costly means of achieving compliance where existing facilities are inaccessible. In addition, employers are required to make accommodations for qualified individuals with handicaps only if those accommodations do not cause an undue economic hardship.

The Department of Justice has reviewed and approved this rule under Executive Order 12250. The Equal Employment Opportunity Commission has reviewed and approved this rule under Executive Order 12067.

This rule was listed as item No. 1009 in the Department's semiannual Agenda of Regulation published on April 25, 1988 (53 FR 13854, 13887) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments relating to information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Mangement and Budget, Washington, DC 30503, Attention: Desk Officer for HUD. After OBM review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

List of Subjects in 24 CFR Part 8

Administrative practice and procedure, Alcoholism, Architectural barriers, Blind, Buildings, Community development block grants, Community facilities, Historic preservation, Housing, Handicapped, Civil rights, Reporting and recordkeeping requirements, Equal employment opportunities, Low and moderate income housing, Public housing, Privacy, Rent subsidies, Telecommunications, Loan programs: housing and community development, Grant programs: housing and community development.

Accordingly, 24 CFR Subtitle A, is amended by adding a new Part 8 to read as follows:

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Subpart A—General Provisions

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Subpart E—Practice and Procedure for Hearings

8.60 General information.
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8.63 Form, execution, service and filing of documents.
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8.65 Proceedings prior to hearing.
8.66 Responsibilities and duties of administrative law judge.
8.67 Hearing procedures.
8.68 The record.
8.69 Posthearing procedures, decisions.
8.70 Judicial standards of practice.
8.71 Post-termination proceedings.
Appendix A—Federal Financial Assistance from the Department of Housing and Urban Development to Which This Part Applies.
Appendix B—Statutory Definitions of Handicapped Persons.

Authority: Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Sec. 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); Sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 8.1 Purpose.

(a) The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), to the end that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This part also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). This part does not effectuate section 504 as it applies to any program or activity conducted by the Department. Compliance with this part does not assure compliance with requirements for accessibility by physically-handicapped persons imposed under the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157; 24 CFR Part 40).

(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in Subparts D and E (including, without limitation, judicial enforcement under § 8.57(a)).

§ 8.2 Applicability.

This part applies to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance. Such assistance includes, but is not limited to, that which is listed in Appendix A of this part.

§ 8.3 Definitions.

As used in this part:

"Accessible", when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit,

means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" is synonomous with accessible.

"Accessible", when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is "accessible" within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

"Adaptability" means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

"Alteration" means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

"Applicant for assistance" means one who submits an application, request, plan, or statement required to be approved by a Department official or by a primary recipient as a condition of eligibility for Federal financial assistance. An application means such a request, plan or statement.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Department" or "HUD" means the Department of Housing and Urban Development.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

"Federal financial assistance" means any assistance provided or otherwise made available by the Department through any grant, loan, contract or any other arrangement, in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in or use of such property, including:

(1) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

"Federal financial assistance" includes community development funds in the form of proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

"Handicap" means any condition or characteristic that renders a person an individual with handicaps.

"Historic preservation programs or activities" means programs or activities receiving Federal financial assistance that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(a) "Physical or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease,

diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (d)(1) of this section but is treated by a recipient as having such an impairment.

"Multifamily housing project" means a project containing five or more dwelling units.

"Primary recipient" means a person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program or activity.

"Program or activity" means all of the operations of:

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other post-secondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraphs (a), (b), or (c) of this section;

any part of which is extended Federal financial assistance.

"Project" means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

"Qualified individual with handicaps" means:

(a) With respect to employment, an individual with handicaps who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or

(c) With respect to any other non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Essential eligibility requirements" include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically metally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be "qualified" for a project lacking such services.

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments.

"Replacement cost of the completed facility" means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

"Secretary" means the Secretary of Housing and Urban Development.

"Section 504" means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§ 8.4 Discrimination prohibited.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

(b) (1) A recipient, in providing any housing, aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified individual with handicaps the opportunity to participate in, or benefit from, the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is not equal to that afforded to others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

(v) Aid or perpetuate discrimination against a qualified individual with handicaps by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any housing, and, benefit, or service to beneficiaries in the recipient's federally assisted program or activity;

(vi) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vii) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available; or

(viii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified individual with handicaps the opportunity to participate in any federally assisted program or activity that is not separate or different despite the existence of permissibly separate or different programs or activities.

(4) In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination solely on the basis of handicap;

(ii) Defeat or substantially impair the accomplishment of the objectives of the recipient's federally assisted program or activity for qualified individuals with a particular handicap involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would:

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department, or

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.

(6) As used in this section, the housing, aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any housing, aid, benefit, or service provided in or through a facility that has been constructed, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c)(1) Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain Department programs operate under statutory definitions of "handicapped person" that are more restrictive than the definition of "individual with handicaps" contained in § 8.3 (see Appendix B). Those definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 8.5 [Reserved]

§ 8.6 Communications.

(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.

(ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.

(b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.

(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not

result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.

Subpart B—Employment

§ 8.10 General prohibitions against employment discrimination.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.

(b) A recipient may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with handicaps or employees with handicaps to discrimination prohibited by this subpart. The relationships referred to in this paragraph (d) include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

§ 8.11 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees accessible to and usable by individuals with handicaps and

(2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 8.12 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless:

(1) The recipient demonstrates that the test score or other selection criterion, as used by the recipient, is job-related for the position in question; and

(2) The appropriate HUD official demonstrates that alternative job-related tests or criteria that tend to screen out fewer individuals with handicaps are unavailable.

(b) A recipient shall select and administer tests concerning employment to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 8.13 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make a preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is an individual with handicaps or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, if the following conditions are met:

(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations, or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential (as provided in paragraph (d) of this section), that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty if all entering employees in that category of job classification must take such an examination regardless of handicap, and the results of such examination are used only in accordance with the requirements of this part.

(d) Information obtained under this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of individuals with handicaps and informed of necessary accommodations;

(2) First aid and safety personnel may be informed if the condition might require emergency treatment; and

(3) Government officials investigating compliance with section 504 shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 8.20 General requirement concerning program accessibility.

Except as otherwise provided in §§ 8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

§ 8.21 Non-housing facilities.

(a) *New construction.* New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) *Alterations to facilities.* Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the recipient's program or activity.

(c) *Existing non-housing facilities.* (1) General. A recipient shall operate each non-housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(i) Necessarily require a recipient to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps;

(ii) In the case of historic preservation programs or activities, require the recipient to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(iii) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration of such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(2) *Methods.*—(1) *General.* A recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(ii) *Historic preservation programs or activities.* In meeting the requirements of § 8.21(c) in historic preservation programs or activities, a recipient shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §§ 8.21(c)(1)(ii) or (iii), alternative methods of achieving program accessibility include using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or adopting other innovative methods.

(3) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988, except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(4) *Transition plan.* If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in details the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(iv) Indicate the official responsible for implementation of the plan; and

(v) Identify the persons or groups with whose assistance the plan was prepared.

§ 8.22 New Construction—housing facilities.

(a) New multifamily housing projects (including public housing projects as required by § 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

(c) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a

need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

§ 8.23 Alterations of existing housing facilities.

(a) *Substantial alteration.* If alterations are undertaken to a project (including a public housing project as required by § 8.25(a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of § 8.22 shall apply.

(b) *Other alterations.* (1) Subject to paragraph (b)(2) of this section, alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

(2) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b)(1) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

§ 8.24 Existing housing programs.

(a) *General.* A recipient shall operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* A recipient may comply with the requirements of this section through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. A recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with this section or to provide supportive services that are not part of the program. In choosing among available methods for meeting the requirments of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988 except that—

(1) In a public housing program where structural changes in facilities are undertaken, such changes shall be made within the timeframes established in § 8.25(c).

(2) In other housing programs, where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(d) *Transition plan and time period for structural changes.* Except as provided in § 8.25(c), in the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 8.25 Public housing (including multifamily Indian housing).

(a) *Development and alteration of public housing.* (1) The requirements of § 8.22 shall apply to all newly constructed public housing.

(2) The requirements of § 8.23 shall apply to public housing developed through rehabilitation and to the alteration of public housing.

(3) In developing public housing through the purchase of existing properties PHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.

(b) *Existing public housing—general.* The requirements of § 8.24(a) shall apply to public housing programs.

(c) *Existing public housing—needs assessment and transition plan.* As soon as possible, each PHA shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations

otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing or Housing Vouchers). If the PHA currently has no accessible units or if the PHA or HUD determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified individuals with handicaps on the waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall include the needs of eligible qualified individuals with handicaps in the area. If the PHA determines, on the basis of such assessment, that there is no need for additional accessible dwelling units or that the need is being or will be met within four years through other means, such as new construction, Section 8 or alterations otherwise contemplated, no further action is required by the PHA under this paragraph. If the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The PHA shall complete the needs assessment and transition plan, if one is necessary, as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA shall complete structural changes necessary to achieve program accessibility as soon as possible but in any event no later than four years after July 11, 1988. The Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four year period for a period not to exceed two years, on a case-by-case determination that compliance within that period would impose undue financial and administrative burdens on the operation of the recipient's public housing program. The Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. The plan shall be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. A copy of the needs assessment and transition plan shall be made available for public inspection. The transition plan shall, at a minimum—

(1) Identify physical obstacles in the PHA's facilities (e.g., dwelling units and common areas) that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the PHA's facilities accessible. A PHA may, if necessary, provide in its plan that it will seek HUD approval, under 24 CFR Part 968, of a comprehensive modernization program to meet the needs of eligible individuals with handicaps;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 8.26 Distribution of accessible dwelling units.

Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 8.27 Occupancy of accessible dwelling units.

(a) Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-handicapped applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 8.28 Housing certificate and housing voucher programs.

(a) In carrying out the requirements of this subpart, a recipient administering a Section 8 Existing Housing Certificate program or a housing voucher program shall:

(1) In providing notice of the availability and nature of housing assistance for lower-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps;

(2) In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

(3) When issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

(4) Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers; and

(5) If necessary in order to achieve compliance with this subpart, request under 24 CFR Part 882, an exception to the Fair Market Rents to allow section 8 certificate holders to rent accessible units.

(b) In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of nondiscrimination.

§ 8.29 Homeownership programs (Sections 235(i) and 235(j), Turnkey III and Indian Housing Mutual Self-Help programs).

Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be constructed or rehabilitated in a program or activity receiving Federal financial assistance shall be made accessible upon request of the prospective buyer if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by § 8.32, those features shall comply with the standards prescribed in § 8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)

§ 8.30 Rental rehabilitation program.

Each grantee or state recipient in the rental rehabilitation program shall, subject to the priority in 24 CFR 511.10(1) and in accordance with other requirements in 24 CFR Part 511, give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps.

§ 8.31 Historic properties.

If historic properties become subject to alterations to which this part applies the requirements of § 4.1.7 of the standards of § 8.32 of this part shall apply, except in the case of the Urban Development Action Grant (UDAG) program. In the UDAG program the requirements of 36 CFR Part 801 shall apply. Accessibility to historic properties subject to alterations need not be provided if such accessibility would substantially impair the significant historic features of the property or result in undue financial and administrative burdens.

§ 8.32 Accessibility standards.

(a) Effective as of July 11, 1988, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR Subpart 101–19.6 for general-type buildings and appendix A to 24 CFR Subpart 40 for residential structures) shall be deemed to comply with the requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part

(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical handicaps.

(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

(e) Except as otherwise provided in this paragraph, the provisions of §§ 8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.

§ 8.33 Housing adjustments.

A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The recipient may not impose upon individuals with handicaps other policies, such as the prohibition of assistive devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in the recipient's federally assisted housing program or activity in violation of this part. Housing policies that the recipient can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

Subpart D—Enforcement

§ 8.50 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance to HUD, or in the case of a subrecipient to a primary recipient, on a form specified by the responsible civil rights official, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another

purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 8.51 Self-evaluation.

(a) Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps:

(1) Evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part;

(2) Modify any policies and practices that do not meet the requirements of this part; and

(3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

(b) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (a)(1) of this section, maintain on file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

§ 8.52 Remedial and affirmative action.

(a) *Remedial action.* (1) If the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination.

(2) The responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action—

(i) With respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or

(ii) With respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take nondiscriminatory steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.

§ 8.53 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employees fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.

§ 8.54 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 8.53. A recipient shall make the initial notification required by this paragraph within 90 days of July 11, 1988. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The recipient shall ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

§ 8.55 Compliance information.

(a) *Cooperation and assistance.* The responsible civil rights official and the award official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible civil rights official or his or her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible civil rights official or his or her designee may determine to be necessary to enable him or her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department data showing the extent to which individuals with handicaps are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible civil rights official during normal business hours to such of

its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible civil rights official finds necessary to apprise such persons of the protections against discrimination assured them by this part.

§ 8.56 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and where he or she has a reasonable basis to do so may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. The responsible civil rights official shall initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review. In addition, each award official shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(b) *Investigations.* The responsible civil rights official shall make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.

(c) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint with the responsible civil rights official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the responsible civil rights official.

(2) *Confidentiality.* The responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the responsible civil rights official waives this time limit for good cause shown. For purposes of determining when a complaint is filed under this paragraph, a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Department.

(4) *Where to file complaints.* Complaints may be filed by mail with the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, or any Regional or Field Office of the Department.

(5) *Contents of complaints.* Each complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part, and a description of the recipient's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of this part.

(6) *Amendmens of complaints.* Complaints may be reasonably and fairly amended at any time. Amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(d) *Notification.* The responsible civil rights official will notify the complainant and the recipient of the agency's receipt of the complaint within ten (10) calendar days.

(e) *Complaint processing procedures.* After acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures.

(1) Preliminary investigation.

(i) Within twenty (20) calendar days of acknowledgement of the complaint, the responsible civil rights official will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the responsible civil rights official will notify the complainant and the award official. The responsible civil righs official will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient an opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the responsible civil rights official a response to the notice of complaint within thirty (30) calendar days of receiving it. With leave of the responsible civil rights official, an answer may be amended at any time. The responsible civil rights official will permit answers to be amended for good cause shown.

(2) Informal resolution. In accordance with paragraph (j) of this section, the responsible civil rights official shall attempt to resolve complaints informally whenever possible.

(f) *Dismissal of complaint.* If the investigation reveals no violation of this part, the responsible civil rights offical will dismiss the complaint and notify the complainant and recipient.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached the responsible civil rights official or his or her designee shall, within 180 days of receipt of the complaint, notify the recipient and the complainant (if any) of the results of the investigation in a letter sent by certified mail, return reaceipt requested, containing the following:

(1) Preliminary findings of fact and a preliminary finding of compliance or noncompliance;

(2) A description of an appropriate remedy for each violation belived to exist;

(3) A notice that a copy of the Final Investigative Report of the Department will be made available, upon request, to the recipient and the complainant (if any); and

(4) A notice of the right of the recipient and the complainant (if any) to request a review of the letter of findings by the reviewing civil rights official.

(h) *Right to review of the letter of findings.* (1) A complainant or recipient may request that a complete review be

made of the letter of findings within 30 days of receipt, by mailing or delivering to the reviewing civil rights officials, Office of Fair Housing and Equal Opportunity, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information.

(2) The reviewing civil rights official shall send by certified mail, return receipt requested, a copy of the request for review to the other party, if any. Such other party shall have 20 days to respond to the request for review.

(3) The reviewing civil rights official shall either sustain or modify the letter of findings within 60 days of the request for review. The reviewing civil rights official's decision shall constitute the formal determination.

(4) If neither party requests that the letter of findings be reviewed, the responsibile civil rights official shall, within fourteen (14) calendar days of the expiration of the time period in paragraph (h)(1) of this section, send a formal written determination of compliance or noncompliance to the recipient and copies to the award official.

(i) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under § 8.27.

(j) *Informal resolution/voluntary compliance*—(1) *General.* It is the policy of the Department to encourage the informal resolution of matters. The responsible civil rights official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil righs official shall attempt to resolve the matter by informal means.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and to obtain assurances where appropriate, that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violtion of this part or the prevention of the occurrence of such violation in the future. The terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the recipient and the responsible civil rights official, and be made part of the file for the matter. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similary situated, and the public interest.

(k) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of investigation, hearing or judicial proceeding arising thereunder.

§ 8.57 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by other means authorized by law. Such other means may include, but not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;

(2) The initiation of debarment proceedings pursuant to Part 24 of this title; and

(3) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 8.50.* If an applicant or a recipient of assistance under a contract which is extended or amended on or after July 11, 1988, fails or refuses to furnish an assurance required under § 8.50 or otherwise fails or refuses to comply with the requirements imposed by that section, Federal financial assistance may be refused under paragraph (c) of this section. The Department is not required to provide assistance during the pendency of the administrative proceeding under such paragraph (c), except where the assistance is due and payable under a contract approved before July 11, 1988.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible civil rights official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed under this part;

(3) The action has been approved by the Secretary; and

(4) The expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5318) has failed to comply with a requirement of this part with respect to a program or activity funded in whole or in part with such assistance, the Secretary shall notify the Governor of the State or the chief executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective under paragraph (c) of this section; or

(2) Any action to effect compliance by any other means authorized by law is taken under paragraph (a) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The responsible civil rights official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) At least 10 days have elapsed since the mailing of such notice to the applicant or recipient. During this period, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate. However, this paragraph shall not be construed to prevent an award official from utilizing appropriate procedures and sanctions established under the program to assure or secure compliance with a specific requirement of the program designed to effectuate the objectives of this part.

§ 8.58 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 8.57(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice shall:

(1) Fix a date not less than 20 days after the date of the notice for the applicant or recipient to request the administrative law judge to schedule a hearing, or

(2) Advise the applicant or recipient that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under § 8.57(c) and consent to the making of a decision on the basis of available information.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the administrative law judge unless the administrative law judge determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before an administrative law judge designated in accordance with 5 U.S.C. 3105 and 3344.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 and in accordance with subpart E of this part relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient are entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the administrative law judge conducting the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted under this part. Rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied by the administrative law judge conducting the hearing where reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the evidence is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs or activities to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings, and for the application to such hearings of rules of procedure consistent with this part. Final decisions in such cases shall be made in accordance with § 8.59.

§ 8.59 Decisions and notices.

(a) *Decision by person other than the Secretary.* The administrative law judge shall make an initial decision, if so authorized, or shall certify the entire record including recommended findings and a proposed decision to the Secretary for a final decision and shall mail a copy of the initial decision or certification to the applicant or recipient by certified or registered mail, return receipt requested. Where the initial decision is made by the administrative law judge, the applicant or recipient may, within the period provided for in subpart E of this part, file with the Secretary exceptions to the initial decision, with reasons therefor. In the absence of exceptions, the Secretary may, within 45 days after the initial decision, serve on the applicant or recipient and complainant (if any) a notice that the Secretary will review the decision. Upon the filing of exceptions or service of a notice of review, the Secretary shall review the initial decision and issue a decision thereon including the reasons therefor. In the absence of exceptions or a notice of review, the initial decision is the final decision of the Secretary. A copy shall also be sent to the complainant (if any).

(b) *Decisions on record or review by the Secretary.* When a record is certified to the Secretary for decision, the Secretary reviews the decision of an administrative law judge under paragraph (a) or (c) of this section, or the administrative law judge conducts a hearing, the applicant or recipient shall be given reasonable opportunity to file briefs or other written statements of its contentions. A copy of the final decision of the Secretary shall be given in writing to the applicant or recipient, and to the complainant, if any, by certified or registered mail, return receipt requested.

(c) *Decisions on record where a hearing is waived.* When a hearing is waived under § 8.58(a)(2), the decision of an administrative law judge shall be based on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of an administrative law judge shall rule on each finding, conclusion, or exception presented. The decision shall identify any requirements, if any, imposed under this part with which the applicant or recipient has failed to comply.

(e) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, to the involved program or activity. The final decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of this part, including provisions designed to assure that no Federal financial assistance will be extended for the program or activity to the applicant or recipient determined to be in default in its performance of an assurance given

by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until the applicant or recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) *Posttermination proceedings.* (1) Any applicant or recipient adversely affected by an order issued under paragraph (e) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered under paragraph (e) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the Secretary determines that those requirements have been satisfied, the Secretary shall restore such eligibility.

(3) If the Secretary denies any request under paragraph (f)(2) of this section, the applicant or recipient may submit a written request for a hearing specifying why the denial of the request is in error. The applicant or recipient shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with subpart E. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (f)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

(g) *Judicial review.* A final decision rendered under this section constitutes final action under section 704 of the Administrative Procedure Act (5 U.S.C. 704) and, to the extent it is not barred by other provisions of law, such a final decision is subject to judicial review under section 706 of the Administrative Procedure Act (5 U.S.C. 706).

(h) *Forms and instruction.* The responsible civil rights official shall assure that forms and detailed instructions and procedures for effectuating this part are issued and promptly made available to interested persons.

(i) *Supervision and coordination.* The Secretary may periodically assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of the department or agency, responsibilities under this part (other than responsibility for final decision as provided in § 8.59). Such responsibilities may include the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of this part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this paragraph shall have the same effect as if the action has been taken by the responsible civil rights official of this Department.

Subpart E—Practice and Procedure for Hearings

§ 8.60 General information.

(a) *Scope of rules.* The rules of procedure in this subpart supplement subpart D and govern the practice for hearings, decisions, and administrative review conducted by HUD, including each of its organizational units, under this part.

(b) *Records to be public.* All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights docket clerk during regular business hours. Inquiries may be addressed to the Civil Rights docket clerk, Department of Housing and Urban Development, Washington, DC 20410.

(c) *Use of number.* As used in this subpart, words importing the singular number may extend and be applied to several persons or things, and vice versa.

(d) *Suspension of rules.* The administrative law judge with respect to pending matters may modify or waive any rule in this subpart upon a determination that no party will be unduly prejudiced and the ends of justice will be served, and upon notice to all parties.

§ 8.61 Appearance and practice.

(a) *Appearance.* A party may appear in person or by counsel and participate fully in any proceeding. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf. Counsel must be members in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

(b) *Authority for representation.* Any individual acting in a representative capacity in any proceeding may be required to show authority to act in the capacity.

(c) *Exclusion from hearing for misconduct.* Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before an administrative law judge shall constitute grounds for immediate exclusion of the person from the hearing by the administrative law judge.

§ 8.62 Parties.

(a) *Parties; General Counsel a party.* (1) The term party shall include an applicant or recipient, or other person who has been served with a notice of hearing or opportuntiy for hearing naming him or her as respondent.

(2) The General Counsel of HUD shall be a party to all proceedings.

(b) *Amici curiae.* (1) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. The petition shall be filed before the prehearing conference or, if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The administrative law judge may grant the petition if he or she finds that the petitioner has a legitimate interest in the proceedings, and that the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceeding. An amicus curiae is not a party and may not introduce evidence at a hearing.

(2) An amicus curiae may submit a statement of position to the administrative law judge before the hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion that a decision is to be made or a prior decision is subject to review. The briefs shall be filed and served on each party within the time limits applicable to the party that the amicus curiae supports; or if the amicus curiae does not support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(c) *Complainants not parties.* A person filing a complaint under § 8.56(c) of this part is not a party to the proceedings under this subpart, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

§ 8.63 Form, execution, service and filing of documents.

(a) *Form of documents to be filed.* Documents to be filed under the rules of this subpart shall be dated, the original signed in ink, shall show the docket description and title of the proceeding and the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

(b) *Signature of documents.* The signature of a party, authorized officer, employee or attorney constitutes a certificate that he or she has read the document, that to the best of his or her knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.

(c) *Filing and service.* All notices by the administrative law judge, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to the administrative law judge from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights docket clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8:45 a.m to 5:15 p.m, e.s.t. or d.s.t., whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 8.69(f).

(d) *Service—how made.* Service shall be made by personal delivery of one copy to each person to be served or by registered or certified mail, return receipt requested, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed.

(e) *Date of service.* The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.

(f) *Certificate of service.* The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his or her attorney or representative. The certificate of service shall state that service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

§ 8.64 Time.

(a) *Computation.* In computing any period of time under this subpart or orders issued under this subpart, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extension of time or postponement.* Requests for extension of time shall be served on all parties and set forth the reasons for the request. Requests may be granted upon a showing of good cause by the applicant. From the designation of an administrative law judge until the issuance of his or her decision, such requests should be addressed to him or her. Answers to such requests are permitted if made promptly.

(c) *Reduction of time to file documents.* For good cause, the administrative law judge with respect to pending matters may reduce any time limit prescribed under this subpart, except as provided by law or other provisions in this part.

§ 8.65 Proceedings prior to hearing.

(a) *Notice of hearing or opportunity for hearing.* Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient under this part.

(b) *Answer to notice.* The respondent, applicant, or recipient may file an answer to the notice within 20 days after service. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the responding party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice that are not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.

(c) *Amendment of notice or answer.* The General Counsel may amend the notice of hearing or opportunity for hearing once before an answer is served. Each respondent may amend his or her answer once not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his or her original answer. Otherwise a notice or answer may be amended only by leave of the administrative law judge. A respondent shall file an answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period is longer, unless the administrative law judge otherwise orders.

(d) *Request for hearing.* Within 20 days after service of a notice of opportunity for hearing that does not fix a date for hearing, the respondent, either in the answer or in a separate document, may request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of all right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

(e) *Consolidation.* The administrative law judge may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

(f) *Motions.* Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the administrative law judge may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the administrative law judge. A repetitious motion will not be entertained.

(g) *Responses to motions and petitions.* Within 8 days after a written motion or petition is served, or such other period as the administrative law judge may fix, any party may file a response. An immediate oral response may be made to an oral motion.

(h) *Disposition of motions and petitions.* The administrative law judge may not sustain or grant a written motion or petition before expiration of the time for filing responses, but may overrule or deny such motion or petition without awaiting responses: *Provided, however,* that prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the administrative law judge, and not disposed of in separate rulings or in their respective decisions, will be deemed denied. Oral argument shall not be held on written motions or petitions unless the administrative law judge in his or her discretion expressly so orders.

§ 8.66 Responsibilities and duties of administrative law judge.

(a) *Responsibility to preside.* An administrative law judge shall preside over all proceedings held under this subpart.

(b) *Designation of administrative law judge.* The designation of an administrative law judge shall be in writing, shall specify whether the administrative law judge is to make an initial decision or to certify the entire record, including his or her recommended findings and proposed decision, to the Secretary, and may fix the time and place of hearing. A copy of such designation shall be served on all parties. After service of the designation of an administrative law judge, and until the administrative law judge makes the decision, motions and petitions shall be submitted to him or her. In the case of the death, illness, disqualification, or unavailability of the designated administrative law judge, another administrative law judge may be designated to take his or her place.

(c) *Authority of administrative law judge.* The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(1) Arrange and issue notice of the date, time and place of hearings or, upon due notice to the parties, change the date, time and place of hearings previously set.

(2) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him or her.

(6) Regulate the course of the hearing and the conduct of counsel therein.

(7) Examine witnesses and direct witnesses to testify.

(8) Receive, rule on, exclude, or limit evidence.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him or her.

(10) Issue initial or recommended decisions.

(11) Take any action authorized by the rules in this subpart or in conformance with the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

§ 8.67 Hearing procedures.

(a) *Statements of positions and trial briefs.* The administrative law judge may require parties and amici curiae to file written statements of position before a hearing, to submit trial briefs, and to participate in conferences to settle, simplify, or fix the issues in a proceeding.

(b) *Evidentiary purpose.* (1) The administrative law judge is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the administrative law judge. Brief opening statements, which shall be limited to statement of the party's position and what he or she intends to prove, may be made at hearings.

(2) Hearings for the receipt of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of this part. Where the respondent's answer to the notice of hearing or opportunity for hearing, his or her failure timely to answer, or from his or her admissions or stipulations in the record, indicate that there are no matters of material fact in dispute, the administrative law judge may enter an order so finding, vacating any hearing date and fixing the time for filing briefs under § 8.69(a). Thereafter the proceedings shall go to conclusion in accordance with § 8.69 of this part. The administrative law judge may allow an appeal in accordance with paragraph (p) of this section.

(c) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. The administrative law judge, in his or her discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record. Unless authorized by the administrative law judge, witnesses will not be permitted to read prepared testimony into the record. Except as provided in paragraphs (e) and (f) of this section, witnesses shall be available at the hearing for cross-examination.

(d) *Exhibits.* Proposed exhibits shall be exchanged at the pre-hearing conference, or otherwise before the hearing if the administrative law judge so requires. Proposed exhibits not exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged before hearing will be deemed admitted unless written objection is filed before the hearing, or unless good cause is shown at the hearing for failure to file such written objection.

(e) *Affidavits.* An affidavit is not inadmissible as such. Unless the administrative law judge fixes other time periods, affidavits shall be filed and served on the parties not later than 15 days before the hearing. Not less than seven days before the hearing, a party may file and serve written objection to any affidavit on the ground that it is necessary to test the truth of assertions therein at hearing. In this event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the administrative law judge determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

(f) *Depositions.* Upon such terms as the administrative law judge determines to be just, and for the convenience of the parties or of the Department, the administrative law judge may authorize or direct the testimony of any witness to be taken by deposition.

(g) *Admissions as to facts and documents.* Not later than 15 days before the scheduled date of the hearing except for good cause shown, or such earlier date as the administrative law judge may order, any party may serve

upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request (not less than ten days after service thereof, or within such further time as the administrative law judge may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered in the proceeding, and shall not constitute an admission by him or her for any other purposes or be used against him or her in any other proceeding or action.

(h) *Evidence.* Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

(i) *Cross-examination.* A witness may be cross-examined on any matter material to the proceeding.

(j) *Unsponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

(k) *Objections.* Objections to evidence shall be timely and briefly state the ground relied upon.

(l) *Exceptions to rulings of administrative law judge unnecessary.* Exceptions to rulings of the administrative law judge are unnecessary. It is sufficient that a party, at the time the ruling of the administrative law judge is sought, makes known the action which he or she desires the administrative law judge to take, or his or her objection to an action taken, and his or her grounds therefor.

(m) *Official notice.* Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

(n) *Public document items.* Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

(o) *Offer of proof.* An offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy such evidence shall be marked for identification and shall accompany the record as the offer of proof.

(p) *Appeals from ruling of administrative law judge.* Rulings of the administrative law judge may not be appealed to the Secretary before consideration of the entire proceeding, except with the consent of the administrative law judge and where he or she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expenses, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the Secretary within such period as the administrative law judge directs. No oral argument will be heard unless the Secretary directs otherwise. At any time before submission of the proceeding for decision, the Secretary may direct the administrative law judge to certify any question or the entire record to him or her for decision. Where the entire record is certified, the administrative law judge shall recommend a decision.

§ 8.68 The record.

(a) *Official transcript.* The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the administrative law judge may authorize corrections to the transcript which involve matters of substance.

(b) *Record for decision.* The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

§ 8.69 Posthearing procedures, decisions.

(a) *Posthearing briefs: Proposed findings and conclusions.* (1) The administrative law judge shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law and, if permitted, reply briefs.

(2) Briefs should include a summary of the evidence relied upon, together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

(b) *Decisions following hearing.* When the time for submission of posthearing briefs has expired, the administrative law judge shall certify the entire record, including recommended findings and proposed decision, to the Secretary or, if so authorized, shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.

(c) *Exceptions to initial or recommended decisions.* Within 30 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the Secretary. Any other party may file a response thereto within 45 days after the mailing of the decision. Upon the filing of such exceptions, the Secretary shall review the decision and issue a decision thereon.

(d) *Final decisions.* (1) The Secretary shall make the final decision in all proceedings under this part after expiration of all applicable time limits provided in paragraph (a) or (c) of this section.

(2) Where the hearing is conducted by an administrative law judge who makes an initial decision, if no exceptions thereto are filed within the 30-day period specificed in paragraph (c) of this section, such initial decision shall become the final decision of the

Secretary upon his or her approval thereof and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of paragraph (d)(3) of this section.

(3) The final decision of the Secretary is an "order" within the meaning of 5 U.S.C. 551(6) (formerly section 2(d) of the Administrative Procedure Act).

(4) All final decisions shall be promptly served on all parties, and amici, if any.

(e) *Oral argument.* (1) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, or upon review on initiative of the Secretary, he or she shall make such request in writing. The Secretary may grant or deny such requests in his or her discretion. If granted, notice of oral argument will be served on all parties. The Notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the Civil Rights docket clerk not later than seven days before the date set for oral argument.

(2) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidation of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(3) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Civil Rights docket clerk at least seven days before the argument.

(f) *Service on amici curiae.* All briefs, exceptions, memoranda, requests, and decisions referred to in § 8.69 shall be served upon amici curiae at the same time and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 8.67(a) shall be served on amici.

§ 8.70 Judicial standards of practice.

(a) *Conduct.* Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use his or her best effort to restrain his or her client from improprieties in connection with a proceeding.

(b) *Improper conduct.* With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the administrative law judge or Secretary by undertaking to bring pressure or influence to bear upon any officer having a responsibility for a decision in the proceeding, or his or her staff. It is improper that such interested persons or any members of the Department's staff or the administrative law judge give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer having responsibility for a decision in the proceeding, or his or her staff. It is improper for any person to solicit communications to any such officer, or his/her staff, other than proper communications by parties or amici curiae.

(c) *Ex parte communications.* Only persons employed by or assigned to work with the administrative law judge or Secretary who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the administrative law judge, the Secretary, or any employee or person involved in the decision process in such proceedings with respect to the merits of that or a factually related proceeding The administrative law judge, the Secretary or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons who are employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

(d) *Expeditious treatment.* Requests for expeditious treatment of matters pending before the administrative law judge are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

(e) *Matter not prohibited.* A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the Civil Rights docket clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by paragraph (c) of this section. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the administrative law judge or the Secretary with respect to securing such respondent's voluntary compliance under § 8.56 of this part are not prohibited.

(f) *Filing of ex parte communications.* A prohibited communication in writing received by the Secretary, or by the administrative law judge shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if he or she considers the memorandum to be incorrect.

§ 8.71 Post-termination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings under this part may request the Secretary for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such requests shall be in writing and shall affirmatively show that, since entry of the order, it has brought its program or activity into compliance with the requirements of this part, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the Secretary denies such request, the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the Secretary to have been in error. The request for such a hearing shall be addressed to the Secretary and shall be made within 30 days after the applicant or recipient is informed that the Secretary has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested under paragraph (a) of this section, the hearing procedures established by this subpart shall be applicable to the proceedings, except as otherwise provided in this section.

Appendix A.—Federal Financial Assistance From the Department of Housing and Urban Development to Which This Part Applies

(The number in parenthesis following each program description is the program number found in the Catalogue of Federal Financial Assistance.)

Community Planning and Development Programs

Community development block grant entitlement program. Title I of the Housing and Community Development Act of 1974, as amended; 42 U.S.C. 5301. (14.218)

Community development block grants/small cities program. Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301. (14.219)

Community development block grants/state program. Title I of the Housing and Community Development Act of 1974, as amended 42 U.S.C. 5301. (14.228)

Community development block grants/Secretary' discretionary fund. Section 107 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5307. (14.225; 14.227)

Section 108 loan guarantees. Section 108 of the Housing and Community Development Act of 1974, as amended. 42 U.S.C. 5308.

Rental rehabilitation grants. Section 17, United States Housing Act of 1937, as amended, 42 U.S.C. 1437(o). (14.230)

Rehabilitation loan program. Section 312, Housing Act of 1964, 42 U.S.C. 1452b. (14.220)

Urban Homesteading. Section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e. (14.222)

Supportive Housing Demonstration. Pub. L. 100–77, 101 Stat. 482.

Emergency Shelter Grants. Pub. L. 100–77, 101 Stat. 482.

Supplemental Assistance Grants. Pub. L. 100–77, 101 Stat. 482.

Urban Development Action Grants. Section 119 of the Housing and Community Development Act of 1977, 42 U.S.C. 5318. (14.221)

Grants for new community development programs, (excluding assistance in the form of guarantees). Title VII, Housing and Urban Development Act of 1970, 42 U.S.C. 4511.

Housing Programs

Lower-income housing assistance payments program. (Section 8.) Section 8, United States Housing Act of 1937, as amended, 42 U.S.C. 1437f. (14.156)

Housing Voucher program. Section 8(o), United States Housing Act of 1937, as amended, 42 U.S.C. 1437f(o). (14.156)

Housing development grants. Section 17, United States Housing Act of 1937, as amended, 42 U.S.C. 1437(o). (14.174)

Lower-income public housing (including operating subsidies, modernization and Indian housing). United States Housing Act of 1937, 42 U.S.C. 1437. (14.850)

Public housing—Comprehensive Improvement Assistance Program (Public Housing Modernization). United States Housing Act of 1937, as amended, 42 U.S.C. 1437l. (14.852)

Operating assistance for troubled multifamily housing project (Troubled Projects Program (Flexible Subsidy)). Housing and Community Development Amendment of 1978, 12 U.S.C. 1715z–1. (14.164)

Technical assistance to contractors or subcontractors. Section 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a). Note.

Nonprofit sponsor assistance program. Section 106(b) of the Housing and Urban Development Act of 1968.

Homeownership for lower income families, with assistance. Section 235(i), National Housing Act, 12 U.S.C. 1715z.

Homes released from rehabilitation project mortgage, with assistance, section 235(j) National Housing Act, 12 U.S.C. 1715z.

Rental and cooperative housing for lower income families. Section 236, National Housing Act, 12 U.S.C. 1715z–1.

Direct loans for housing for the elderly or handicapped. Section 202, Housing Act of 1959, 12 U.S.C. 1701g. (14.157)

Assistance for Housing in Alaska, section 1004 Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.

Technical assistance and interest subsidies to State housing finance and development agencies (Section 802). Section 802, Housing and Community Development Act of 1974, 42 U.S.C. 1440.

Emergency mortgage relief loan program. Section 106 of the Emergency Homeowner's Relief Act, 12 U.S.C. 705.

Rent supplements. Section 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s. (14.149)

Counseling for homebuyers, homeowners and tenants. Section 106, Housing and Urban Development Act of 1968, as amended by section 903(a), Housing and Urban Development Act of 1970, 12 U.S.C. 1701x. (14.169)

Lower-income housing—homeownership opportunities for lower-income families (turnkey III—mutual help for Indian areas). United States Housing Act of 1937, 42 U.S.C. 1437.

Community services for tenants. Section 3, U.S. Housing Act of 1937, 42 U.S.C. 1437a.

Congregate Housing Services Program, Title IV. Housing and Community Development Act of 1978, 42 U.S.C. 8001–8009. (14.170)

Surplus land for low and moderate income housing. Section 414 of the Housing and Urban Development Act of 1969, 40 U.S.C. 484b.

GNMA

Management and Liquidating. Sections 305 and 313, National Housing Act, 12 U.S.C. 1720, 1723e.

Policy Development and Research

Research and technology, (excluding contracts for procurement). Title V, Housing and Urban Development Act of 1970, 42 U.S.C. 1701z–1 [including the following current programs: Modular Integrated Utility System (MIUS), Tenant Management Program, Urban Observatory, and Urban Reinvestment Task Force]. (14.506)

Solar heating and cooling demonstration program. Solar Heating and Cooling Act of 1974, 42 U.S.C. 5501. (14.550)

Fair Housing and Equal Opportunity

Fair housing assistance program. Title VIII of the Civil Rights Act of 1968; as amended, 42 U.S.C. 3601. (14.401)

Community Housing Resource Board Program, 42 U.S.C. 3601. (14.403)

Solar Energy and Energy Conservation Bank

Solar Energy and Energy Conservation Bank—financial assistance. Title V, Energy Security Act, 12 U.S.C. 3601–20.

Appendix B—Statutory Definitions of Handicapped Persons

The following programs operate under the statutory definition of handicapped person in section 202(d)(4) of the Housing Act of 1959, as amended, 12 U.S.C. 1701q(d)(4): Homes released from rehabilitation project mortgage (section 221(h), National Housing Act); Condominium units released from a section 221(d)(3) mortgage (section 221(i), National Housing Act); Housing for the Elderly or Handicapped (section 202, Housing Act of 1959); and Rental and Cooperative Housing for Lower Income Persons (section 236(j)(2)(B) and section 236(i)(4), National Housing Act). This definition reads as follows:

The term "elderly or handicapped families" means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is handicapped, and such term also means a single person who is sixty-two years of age or over or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently; and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in Section 102(a)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950.

The following programs operate under a definition of handicapped person found in section 3(b)(3), United States Housing Act of 1937, as amended: Lower-Income Public Housing; and section 8, U.S. Housing Act of 1937, Housing Assistance Payments Program. This definition reads as follows:

The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 223 of the Social Security Act or in section 102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 or is handicapped * * *. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions.

The two statutory definitions (i.e., section 202(d)(4) of the Housing Act of 1959 and section 3(b)(3) of the U.S. Housing Act) are essentially the same except that the latter definition includes a person who "is under a disability as defined in section 223 of the Social Security Act" and the former does not. The criteria for determining whether a person is handicapped are the same in both statutes: An impairment which (i) is expected to be of long-continued and indefinite duration; (ii) substantially impedes his/her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions.

Dated: May 24, 1988.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 88-12141 Filed 6-1-88; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-88-876; FR-770]

Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973, as Amended and 24 CFR Part 8

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: HUD today published in the **Federal Register** a final rule adopting procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development (24 CFR Part 8). The rule, which implements section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), uses the terms "responsible civil rights official" and "reviewing civil rights official." The "responsible civil rights official" is the person within HUD delegated the authority to oversee civil rights functions relating to section 504. The "reviewing civil rights official" is the person within HUD assigned to accept appeals from certain determinations of the responsible civil rights official. The Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity, the authority to act as the "responsible civil rights official" under 24 CFR Part 8. The Assistant Secretary for Fair Housing and Equal Opportunity may redelegate the authority to act as "responsible civil rights official" to the Regional Directors of Fair Housing and Equal Opportunity and to the Director of the Office of Program Compliance, except the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1). The Secretary is delegating to the Under Secretary the authority to act as "reviewing civil rights official."

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-5904 (voice or TDD).

Delegation of Authority

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Fair Housing and Equal Opportunity authority to act as the "responsible civil rights official" as set forth in 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development." The Assistant Secretary for Fair Housing and Equal Opportunity may redelegate the authority to act as "responsible civil rights official" under 24 CFR Part 8 to the Regional Directors of Fair Housing and Equal Opportunity and to the Director of the Office of Program Compliance, except the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1).

The Secretary of Housing and Urban Development delegates to the Under Secretary authority to act as the "reviewing civil rights official" as set forth in 24 CFR Part 8.

Dated: May 24, 1988.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 88-12139 Filed 6-1-88; 8:45 am]

BILLING CODE 4210-32-M

Office of Fair Housing and Equal Opportunity

[Docket No. D-88-877; FR-770]

Re-Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973, as Amended and 24 CFR Part 8

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of re-delegation of authority.

SUMMARY: HUD today published in the **Federal Register** a notice of delegation of authority under section 504 of the Rehabilitation Act of 1973, as amended and 24 CFR Part 8. Under that delegation the Secretary of HUD delegated to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) the authority to act as the "responsible civil rights official" under 24 CFR Part 8. The Secretary of HUD also authorized the Assistant Secretary for FHEO to redelegate the authority to act as "responsible civil rights official" to the Regional Directors of FHEO and to the Director of the Office of Program Compliance, except the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1). The Assistant Secretary for FHEO is delegating to the Regional Directors of FHEO and to the Director of the Office of Program Compliance the authority to exercise and perform certain of the authorities and responsibilities of the "responsible civil rights official" in 24 CFR Part 8.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh St., SW., Washington, DC 20410. Telephone: (202) 755-5904 (voice or TDD).

Re-Delegation of Authority

The Assistant Secretary for Fair Housing and Equal Opportunity delegates the authority to act as the "responsible civil rights official" as set forth in 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development" to the Regional Directors of Fair Housing and Equal Opportunity in the following specific circumstances only:

1. The authority to request a copy of the documents described in 24 CFR 8.51(b).

2. The authority to receive compliance reports submitted by recipients under 24 CFR 8.55(b).

3. The authority to conduct periodic compliance reviews under 24 CFR 8.56(a) and the authority to conduct an investigation under § 8.56(b).

4. The authority to notify the complainant and the recipient of HUD's receipt of a complaint under 24 CFR 8.56(d), the authority to process a complaint in accordance with 24 CFR 8.56(e) and the authority to dismiss a complaint under 24 CFR 8.56(f).

The Assistant Secretary for Fair Housing and Equal Opportunity delegates the authority to act as the "responsible civil rights official" as set forth in 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development" to the Director

of the Office of Program Compliance in the following specific circumstances only:

1. The authority to waive the time limit for filing a complaint in accordance with 24 CFR 8.56(c)(3).

2. The authority to issue a preliminary finding of compliance under 24 CFR 8.56(g)(1).

3. The authority to issue a formal written determination of compliance under 24 CFR 8.56(h)(4).

Dated: May 24, 1988.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 88-12140 Filed 6-1-88; 8:45 am]

BILLING CODE 4210-28-M

federal register

Thursday
June 2, 1988

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1988; Notice of Publication

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Plan for Fiscal Year 1988

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of publication of the Office of Juvenile Justice and Delinquency Prevention Program Plan for Fiscal Year 1988.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its Program Plan for Fiscal Year 1988 in order to inform the public and potential fund recipients of the program priorities that the Office will pursue during the current fiscal year.

FOR FURTHER INFORMATION CONTACT: D. Elen Grigg, Information Specialist, Office of Juvenile Justice and Delinquency Prevention, Telephone: (202) 724–7573.

SUPPLEMENTARY INFORMATION:

Overview

Legislative Mandate and Mission

The Juvenile Justice and Delinquency Prevention Act of 1974 established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) as the Federal government's primary agency for addressing the issue of juvenile crime and related problems in a systematic and comprehensive manner. The mission of the OJJDP is to provide leadership and resources to states and localities in implementing the mandates and goals of the JJDP Act, as defined by Congress, within the appropriations provided for the program annually, and in a manner consistent with the policies and directions established by the Executive Branch of government.

The Act authorizes OJJDP to coordinate Federal juvenile delinquency programs, provide formula grants to states, provide information, training and technical assistance, develop and implement effective programs, and conduct research on juvenile delinquency and child victimization.

Organization and Functions

To implement the legislation and systematically confront the problems of juvenile delinquency and missing and exploited children, OJJDP conducts research, develops programs, demonstrates promising approaches, and disseminates information and resources. OJJDP also coordinates Federal juvenile delinquency programs as well as programs for missing and exploited children.

OJJDP FY 1988 Program Priorities

Each fiscal year, the Office of Juvenile Justice and Delinquency Prevention funds programs targeted at those issues deemed most critical in the juvenile justice field. To ensure the development of well planned, cost-effective programs, and fiscal accountability, OJJDP used a strategic planning process to garner input from the field, establish program priorities, and ensure that decisions on the allocation of staff and resources reflect the direction of the Office.

The following describes the four FY 1988 priority program areas developed by OJJDP:

Illegal Drug Use Among High-Risk Youth

Programs will be based on the concept of accountability of youth, their families, and communities—to promote zero tolerance for illegal drug use. Prevention and control of youth gang drug trafficking will be a major focus. Prototype programs for each component of the juvenile justice system will be developed. Community-wide strategies will be designed to promote system coordination, and research will continue to increase understanding of the risk factors for youth involvement in illegal drugs to guide communities in combatting this problem.

Serious Juvenile Crime

Programs in this area focus on the individual components of the juvenile justice system that impact on serious crime (e.g., law enforcement). In addition, a major emphasis is coordination across local system components to more effectively concentrate and direct resources to respond to serious juvenile crime. Demonstration and training programs promote the implementation of community-wide strategies to impact on serious juvenile crime and develop coordinated, consistent responses by all components of the justice system. Research will also continue on patterns of delinquent and criminal careers and the implications for prevention and control, which will assist local communities in developing more effective programs.

Missing and Exploited Children

Programs in this area are designed to reduce the incidence of crimes against children, particularly abduction and sexual exploitation, and to improve the responses of agencies that are responsible for dealing with these crimes. Priority will be given to providing information, training, and technical assistance to juvenile justice and other decisionmakers regarding effective strategies to address missing and exploited children. There will be a continued emphasis on responding to missing children and their families who have been victims of abduction and/or sexual exploitation. Efforts to develop better information on the scope and nature of the problem to inform policy and program development will continue.

Jail Removal

The Juvenile Justice and Delinquency Prevention Act, as amended, calls for the removal of juveniles from adult jails and lockups as a condition of receiving formula funds. OJJDP discretionary programs are aimed at developing information on appropriate alternatives to jails for different types of juveniles, and on assisting states and local jurisdictions to systematically plan and implement strategies to remove juveniles from adult jails and lockups.

OJJDP Management Priorities

Significant steps were taken in the previous fiscal year to improve the management of the Office in order to ensure the efficient development of technically sound and cost-effective programs. The focus of these efforts was the development and implementation of a program planning process, a program development process, and a monitoring process to ensure careful and effective implementation of both the discretionary and formula awards. As a result of these efforts in FY 1987, approximately 62 discretionary programs were awarded totaling $28,280,970 to address all components of the juvenile justice system: prevention, law enforcement, adjudication, supervision and missing and exploited children.

This fiscal year the management priorities will be to continue to:

- Promote better planning between the discretionary and formula grant programs to assist communities in developing innovative programs and providing better services;
- Improve communication and procedures between the Office and other state and local juvenile justice agencies, grantees and contractors;
- Initiate new methods and procedures for monitoring grants and contracts as well as tracking the use of formula funds and states' compliance with the legislative mandates; and,
- Aggressively enhance the knowledge and skills of professionals in the field by training, technical assistance, and dissemination of information in a timely fashion regarding the best practices and latest

information on office activities and programs.

OJJDP Program Development

OJJDP programming is guided by a conceptual framework that defines the primary purpose of a program in terms of its contribution to building a comprehensive strategy in preventing and controlling delinquency. As a result, the Office is assisting the field by defining each of the components of the system, its operations and its relationship to other components, as a basis for developing programs to improve service delivery to youth.

The programs that comprise the comprehensive strategy address three concepts:

- *Systemwide Development*—Program development is focused on one or more specific components of the juvenile justice system (prevention, law enforcement/prosecution, adjudication, and supervision). The purpose is to develop state-of-the-art approaches to respond to specific problems or issues, and to increase the effectiveness of each component of the juvenile justice system in providing services to juveniles.
- *System Coordination*—Program development emphasizes community organization and planning strategies within programs focused on specific topics (e.g., arson, gangs, etc.), as well as promotes systemwide program development and implementation efforts (e.g., SHOCAP, Effective Strategies Systemwide). These programs promote system coordination within one component area (e.g., prevention) as well as among system components (e.g., prevention, law enforcement, and adjudication) and guide communities in implementing comprehensive strategies that maximize the use of resources.
- *System Operations*—Program development is designed to enhance how the system components function individually and cooperatively with regard to decisionmaking, information collection analysis, and utilization, as well as resources management and assessment (e.g., Law Enforcement Handling of Juvenile Offenders and Juvenile Court Management Training). Each system component must understand its own operations and decisionmaking processes in order to effectively participate in systemwide program development and coordination. Through promoting systematic decisionmaking, information collection, resource management, and utilization, these programs enhance system operation and service delivery to youth and their families.

The OJJDP approach to program development calls for research to develop new information; the application of research to the development of prototypes/program models; field testing or demonstration of prototypes in selected sites; and dissemination of prototypical programs and processes to states and communities nationwide through training and technical assistance.

This approach to program development allows OJJDP to systematically track the development of programs; to monitor financial obligations and project future expenditures; to ensure the information needs of future stages or phases of the project are considered in program development; and to periodically reassess its resource commitments to a program at the completion of each developmental stage.

FY 1988 Program Planning Activities

As with the previous fiscal year, the program planning process consisted of an internal review of existing programs as well as external input from a variety of sources: Juvenile justice policymakers and practitioners from the State and local levels, OJJDP grantees and contractors, State planning agencies and advisory groups, human service organizations and professional associations with interests in juvenile justice and related issues.

The intenal planning process focused on the effectiveness of existing programs and projects to determine whether they should be continued, expanded, reoriented to another purpose or terminated. This process involved input from the staff and management personnel.

OJJDP engaged in five primary activities that comprised the external planning process for fiscal years 1987 and 1988:

- Program Development Seminar—convened to provide information regarding critical juvenile justice issues from the perspectives of practitioner experts.
- Program Development Workshop—convened to identify key juvenile justice issues and develop specific program strategies utilizing the talents of a diverse group comprised of practitioners, researchers, policy analysts, information specialists, planners.
- State Advisory Group Conference—to garner ideas from the field on the priority issues and program needs of States and state juvenile justice practitioners.
- Training sessions, conferences, and other activities related to various OJJDP programs that provided an opportunity to review specific issues with a variety of juvenile justice professionals.
- Program Development Workshop on High Risk Youth—convened to review specific issues and strategies to prevent, intervene and provide treatment to the youth at most risk of becoming involved in illegal drug and alcohol use.

These activities guided the selection of the four priority areas for FY 1988 (illegal drug use, serious juvenile crime, missing and exploited children, and jail removal), as well as decisions concerning the scope and direction of continuation programs.

The following sections consist of brief summaries of each of the programs planned for FY 1988.

Prevention

Total Allocation: $11,528,000

Continuation Programs

Cities in Schools

The purpose of this program is to develop state and local public/private partnerships designed to establish educational and social programs that provide comprehensive services to youth at risk of becoming involved in delinquency and illegal drug use. It prevents youth from dropping out of school and provides alternative education services.

Law-Related Education (LRE)

The purpose of this program is to provide training and materials to encourage and guide the establishment of LRE delinquency prevention programs, for state and local school jurisdictions to incorporate into the curriculums of grades kindergarten through 12. It assists schools in helping children to understand the law and its role in society.

National School Safety Center

The purpose of this program is to provide information on school safety, identify methods to diminish crime, violence, and illegal drug use in schools and on campuses, and develop innovative crime prevention and school discipline programs. It assists schools in implementing a variety of strategies to create a safe environment.

Super-Teams

This program is designed to enhance the ability of schools to prevent drug and alcohol use by teaching resistance and alternative behavioral skills to students. It will contribute to ensuring that youth remain drug-free.

Reduction of School Crime

The purpose of this program is to test promising desciplinary and crime control policies and procedures designed to reduce school crime and disorder. It will identify effective methods of instituting consistent policies that contribute to reducing discipline and crime problems in schools.

Law Enforcement Explorers

The Law Enforcement Exploring program of the Boy Scouts of America presents an opportunity for America's young people to assess their interest in and potential for a career in the criminal justice system. This apprenticeship-type program provides direct assistance to law enforcement agencies. The mutual understanding it creates among practitioners, teenagers and the general public contributes to delinquency prevention and control. Special attention is given to prevention of illegal drug use.

National Congress of Black Churches Anti-Drug Abuse Program

This development project will involve the design and implementation of a community capacity building and mobilization program. It will assist communities in developing comprehensive strategies to prevent and intervene in illegal drug use among youth.

Effective Strategies Systemwide

The purpose of this program is to demonstrate a planning and organization strategy for communities to assess and respond to their current juvenile drug abuse problems and needs. It will strengthen community efforts to eliminate illegal drug use among youth by coordination and targeting resources.

Investigation of the Causes and Correlates of Juvenile and Adult Criminality in the Life Experiences of the 1958 Philadelphia Birth Cohort: Follow-Up

The purpose of this program is to expand the knowlege of factors that contribute to involvement in crime, and transition from juvenile to adult youth criminal activities. A sample of the 1958 Philadelphia birth cohort will be interviewed to obtain information on a variety of relevant life experiences. It will facilitate the identification of serious, chronic offenders and crucial intervention points in the development of a criminal career.

Juvenile Drug Abuse Among Minority Populations

The purpose of this program is to increase understanding of the etiology and patterns of drug abuse among ethnic minority populations. This information will be used as a basis for developing more effective prevention programming for these groups.

Causes and Correlates of Delinquency

This program is designed to improve our understanding of the development of positive, delinquent, and drug abuse behavior patterns in the context of the community, family and the individual. It will identify risk factors that must be addressed in risk classification, and in designing effective interventions for all types of youth.

Juvenile Justice and the Learning Disabled

This project consists of four to five day regional training programs for juvenile justice practitioners to provide an overview of the data, research and programs related to learning disabilities and juvenile delinquency. It is designed to assist system practitioners in identifying and making appropriate referrals for juveniles with learning disabilities.

Patterns of Drug Abuse and Delinquency Among Inner City Youth

The purpose of this project is to describe patterns of drug use and delinquency, and to identify factors that influence involvement in delinquency and drug use and sales among high risk populations. The study will be based on black males in the ninth and tenth grades in Washington, DC high schools serving primarily inner city, lower income areas. It will provide communities greater information about the factors which impact black, high school aged, inner city youth, enabling communities to develop appropriate prevention and intervention services.

Support Programs

National Criminal Justice Reference Service

The purpose of this dissemination program is to provide information services to the juvenile justice community, as mandated in the JJDP Act of 1974, as amended. The Juvenile Justice Clearinghouse enable all sectors of the juvenile justice field to receive current information on advanced practices and techniques as it becomes available.

Juvenile Justice Resource Center

The purpose of this effort is to provide technical assistance and support to OJJDP/NIJJDP, grantees, the Coordinating Council of Juvenile Justice and Delinquency Prevention, and the Advisory Board on Missing Children in all research, program development, evaluation, training, and research utilization activities.

New Programs

National Public Awareness Campaign: High Risk Youth

The purpose of the program is to aggressively communicate the message that illegal drug use will not be tolerated and that everyone—youth, families, and communities—will be held accountable. It will promote attitudinal changes and the message that communities should mobilize resources and develop comprehensive strategies to eliminate illegal drug use among high risk youth.

National Information Package: High Risk Youth

The national information package will provide guidance to states and communities in identifying the scope of their youth drug problem and in identifying effective strategies to respond to the problem. Additionally, it will encourage communities to concentrate and direct resources to implement those strategies.

Prevention and Intervention Program for High Risk Youth

The purpose of this program is to design and promote prevention programs for youth at high risk for illegal drug use and the potential consequences, including contracting AIDS. It will involve developing an outreach education and referral component aimed at difficult to reach youth populations. It will improve the capability of the community to reach these juvenile populations most at risk for illegal drug use by providing guidance regarding prevention and intervention strategies.

Drug Abuse Prevention and Intervention in Public Housing

The purpose of this program is to demonstrate effective strategies to reduce the supply and demand for illegal drugs among high risk youth in public housing. It will provide local communities with a comprehensive approach to provide intensive services to high risk youth and their families within public housing settings using public and private resources.

Reaching At-Risk Youth in Public Housing

The purpose of this program is to establish Boys and Girls Clubs in selected housing projects. This will be accomplished by providing training and technical assistance to personnel from both the public housing authority and the sponsoring Boys and Girls Clubs. The program is designed to assist local communities in providing alternatives to substance abuse involvement (e.g. recreation, education, and referral services) for at risk youth in public housing projects.

State and Local Training Regarding the OJJDP Discretionary Program and the Coordinating of Block Funds for Drug Programs for High Risk Youth

The purpose of this program effort is to provide information to states and localities about OJJDP discretionary programs and funding, emphasizing their relationship to block grant and local discretionary efforts within state and local jurisdictions. Special attention will be given to the coordination of the use of funds from multiple Federal, state, and local sources to develop long-term strategies for preventing and reducing drug abuse among high risk youth. It will enable communities, through improved information, to target funding resources from multiple sources to develop immediate and long-term strategies.

Education, Employment and Tuition Program: A Public/Private Venture

The purpose of this program will be to promote a national scope venture between the public and private sector to impact on youth who are at high risk of involvement in illegal drug use and/or delinquency. It will provide intensive alternative education, social services and vocational education, as well as immediate employment for high risk youth.

1988 Citizenship—Washington Focus 4-H Justice Fellows Program

The purpose of this program is to provide information to 4-H club leaders about the priority programs of the Office, school safety and crime prevention so that they may initiate club projects in their home communities.

Law Enforcement/Prosecution

Total Allocation: $6,425,000

Continuation Programs

National Center for the Prosecution of Child Abuse

The purpose of this program is to provide training, technical assistance and information to promote more informed and vigorous prosecution of child abuse and to minimize the trauma experienced by children whose cases are handled by the criminal justice system. It will improve the capability of communities to develop swift, effective legal responses to child abuse.

Serious Habitual Offender Comprehensive Assistance Program

The purpose of this program is to provide intensive training and technical assistance to a select number of communities in order to promote specific policies and practices among the primary components of the juvenile justice system. It will improve the capability of the system to efficiently identify, adjudicate and provide appropriate supervision and services for the serious habitual juvenile offender.

Juvenile Justice Training for State and Local Law Enforcement, School Administration, Prosecution, and Probation Personnel

The purpose of this program is to train school, law enforcement, prosecution and probation personnel how to share information, develop complementary policies and programs in order to improve school safety, and to provide effective supervision and delinquency prevention services. It assists schools in establishing safe, drug-free environments for learning.

National College of District Attorneys (NCDA)

The purpose of this program is to provide training for juvenile prosecutors regarding practical trial and case handling skills. It will assist prosecutors in prioritizing delinquency cases and processing them more efficiently.

Juvenile Justice Training for State and Local Law Enforcement Personnel (Glynco)

The purpose of this program is to assist State and local law enforcement personnel in improving decision-making and to provide them with a better understanding of the juvenile justice system. Emphasis is placed on increasing the effectiveness of child abuse investigations. It guides police in making decisions regarding the arrest and disposition of juveniles.

New Programs

Effective Strategies for Juvenile Justice Decision-Makers: High Risk Youth

The purpose of this program is to enhance the role of law enforcement and court personnel and other appropriate decision-makers in processing drug-related case from arrest through disposition development and implementation as well as in reducing illegal drug use among youth within their communities. It will guide communities in providing predictable consequences and appropriate services for youth involved in illegal drugs.

Practitioner Symposiums on Juvenile Gangs

The purpose of this program is to inform key juvenile and criminal justice personnel, community-based organizations, and school officials, about the nature and scope of youth gang activity in cities with emerging and chronic gangs. It will provide a forum for professionals from cities with chronic youth gang problems to inform the emerging cities throughout the United States about promising strategies.

Youth Gang Demonstration Initiative: Neighborhood Reclamation

This program is designed to develop and implement a comprehensive multi-agency strategy focused on a specific neighborhood area in Los Angeles, CA, in an effort to control and prevent illegal juvenile gang behavior. The purpose is to empower the community to establish its role in the development of healthy, productive, law-abiding youth.

Jail Removal Initiative II

The purpose of this program is to assist specific states eligible for FY 1988 formula funds not in substantial compliance in achieving full compliance with section 223(a)(14) of the JJDP Act requiring the states to remove juveniles from adult jails and lockups. It will assist states in identifying appropriate alternative placements for juveniles under the jurisdiction of the juvenile justice system.

Adjudication

Total Allocation: $2,707,000

Continuation Programs

Juvenile Justice Data Archive

The purpose of this program is to collect, process, analyze, and disseminate available data concerning cases handled by the nation's juvenile courts through the maintenance of a National Juvenile Court Data Archive. It provides direct assistance to jurisdictions in analyzing their juvenile court data in order to better manage their caseflow and allocate resources more effectively.

Court Appointed Special Advocates

The purpose of this program is to provide training and technical assistance to local juvenile courts to promote the development and use of

adult volunteers as court appointed special advocates for youth under the jurisdiction of the court. It assists the court in providing appropriate support to youth under its jurisdiction.

Juvenile Court Management Training

The purpose of this program is to provide management training to juvenile justice personnel. It assists juvenile court managers in making better intake, detention and disposition decisions as well as in developing productive working relationships with other parts of the system.

Technical Assistance for Juvenile Courts

The purpose of this program is to provide technical assistance to the nation's juvenile courts and court-related agencies. It improves juvenile court information development and utilization, use of automated information systems and resource allocation through individualized assistance.

Juvenile Court Training and Technical Assistance

The purpose of this program is to provide training and technical assistance for juvenile and family court judges and other court related personnel providing them with current information on pertinent case law, disposition and treatment options. It provides new personnel with the basic skills needed to perform their court-related duties and apprises juvenile court judges of the most recent legal, social and managerial developments in the field so they can improve court services to youth.

Permanency Planning

The purpose of this program is to prevent delinquency through improved judicial decisionmaking for children under consideration for out-of-home placement and ensure that placements are periodically reviewed.

New Programs

Drug-Related Accountability Package

The purpose of this program is to provide states and local jurisdictions with state-of-the-art information about effective legislation and programs that support user accountability for illegal drug use among families and youth. This project will involve the identification of state statutes, policies and programs that promote user accountability and provide a training and technical assistance package for juvenile justice system policymakers and practitioners.

Supervision

Total Allocation: $5,729,000

Continuation Programs

Evaluation of Private Sector Corrections

The purpose of this program is to evaluate the capability of private organizations to operate effective correction programs for chronic serious juvenile offenders. It will provide guidance to the public and private sector corrections community in determining the type of services that should be provided to serious offenders.

Management Training and Technical Assistance for Private Non-Profit Organizations

The purpose of this project is to provide training in all aspects of organizational leadership and management for managers and directors of private, not-for-profit youth serving agencies. It is designed to enhance the effectiveness of the organizations in their provision of services and, as a result, strengthen their roles as resources in the juvenile justice system.

Restitution Education, Specialized Training and Technical Assistance

The purpose of this program is to promote the use of restitution as a disposition by providing training, technical assistance and information about restitution to courts and juvenile justice practitioners. It helps communities to initiate or improve their existing restitution programs.

Technical Assistance to States

The purpose of this project is to provide assistance to states in developing and implementing comprehensive plans for the use of JJDP formula grant funds; including assistance in achieving compliance with the mandates of the Juvenile Justice and Delinquency Prevention Act, as amended.

Training and Technical Assistance for Juvenile Detention and Corrections

The purpose of this program is to provide training and technical assistance to managers and administrators of state and local juvenile detention and corrections programs. It assists communities in improving their pre- and post-adjudicatory services, and in achieving and maintaining compliance with mandates of the JJDP Act.

Children in Custody

The purpose of this program is to provide information on the characteristics and population of the nation's juvenile detention, correctional and shelter care facilities by focusing on the completion of analytical reports based on the 1984/85 census; the fielding of the 1986/87 census; and the completion of necessary feasibility and pilot tests relating to a survey of juveniles in custody. It will assist the juvenile justice community in assessing existing institutionalization practices as well as the nature and level of service provision to selected populations in secure confinement.

Deinstitutionalization of Status Offender Research

The purpose of this project is to evaluate the effects of deinstitutionalization on the juvenile justice system, other youth-serving agencies, and on youth involved in status offenses. It will guide community and state programs and legislative activities in providing services to this population.

Insular Area Support

The purpose of this program is to provide supplemental financial support to the Virgin Islands, Guam, American Samoa, the Freely Associated States of the Pacific Islands and the Commonwealth of the Northern Mariana Islands, in accord with section 224 of the JJDP Act, as amended.

Non-Participating State Initiative

The purpose of this program is to make funds available to non-participating states in accordance with section 223(d) of the JJDP Act, as amended.

New Programs

National Information Package; AIDS in Juvenile Corrections

The purpose of the national information package is to provide guidance to juvenile corrections practitioners in understanding the scope and nature of the problem of AIDS among youth, identifying appropriate policies and strategies to respond to the problem, and mobilizing resources to implement those strategies.

Testing for Illegal Drug Use

The purpose of this program is to determine the types of drug use among detention populations and to promote the use of drug testing in detention programs. This program will involve the identification of existing testing programs, conduct an analysis of drug testing data, and develop operational manuals for drug testing in detention facilities. It will assist communities in identifying and responding to the

immediate needs of youth involved in the juvenile justice system.

Drug Testing Guidelines

The purpose of this program is to develop and disseminate drug testing guidelines for juvenile justice agencies. The guidelines will focus on the criteria for determining who should be tested, testing procedures (how and when), and by whom and how the test results should be used. It will guide the use of limited resources from pre-adjudicatory intake through post-adjudicatory classification for effective and necessary testing of detained or adjudicated youth.

Drug Identification Program for Juvenile Probation and Parole Personnel

The purpose of the program is to train probation and parole officers in the sophisticated drug evaluation and classification process developed by the law enforcement field. It will be used as an additional tool in supervising probationers and parolees who are ordered to remain drug free as a condition of their release into the community.

Electronic Monitoring

The purpose of this program is to design and disseminate guidelines for the use of electronic hardware as one component of a supervision strategy for serious juvenile offenders. It will guide the use of such techniques as components or alternatives to detention or pre- and post-supervision activities at the local level.

Missing and Exploited Children

Total Allocation: $4,999,000

Continuation Programs

National Study of the Incidence of Missing Children

The purpose of this research is to respond to the need for more accurate information regarding the number of missing children and the characteristics of the events. It will provide the most comprehensive and reliable data to serve as a basis for policy and program development.

National Center for Missing and Exploited Children

The purpose of this program is to provide national clearinghouse services and technical assistance in the area of missing and exploited children. It assists the criminal justice system, public and private agencies, families, parents, and guardians to better coordinate information and activities related to missing and exploited children.

Management Training and Technical Assistance for Private Voluntary Organizations Involved with Missing and Exploited Children

The purpose of this program is to provide training and technical assistance in administration and management to private voluntary organizations to more efficiently respond to the problem of missing and exploited children.

The Child Victim as a Witness

The purpose of this program is to test different techniques for improving the handling of child victims who participate as witnesses in court proceedings. It will improve the fairness and efficiency of the justice process and reduce the trauma for child victims.

Law Enforcement Handling of Missing Children

The purpose of this research is to improve understanding of the role of law enforcement in responding to reports of missing children, including runaways and children abducted by parents or non-family members, and in handling the runaway/street youth. It will provide guidance to police agencies in implementing more effective policies and procedures to locate missing children.

State Clearinghouses

The purpose of this program is to provide financial support to state missing children clearinghouses. It will assist these organizations in better allocating resources to locate missing children, and in assisting local jurisdictions in responding to missing children.

New Programs

National Conference on Child Sexual Exploitation

The purpose of this effort is to increase awareness of the problem of child sexual exploitation by providing information on: Activities in other communities; methods for strengthening collaboration among community agencies and organizations involved with child sexual exploitation; assisting communities in Federal and local resource identification and utilization. This will result in strengthening the community, by mobilizing resources, to effectively combat child sexual exploitation.

Missing and Exploited Children Comprehensive Action Program

The purpose of this program is to design and implement a community organization and planning strategy to guide comprehensive program development focused on missing and exploited children. It will enable communities to implement strategies to guide comprehensive program development, and effectively mobilize system resources.

Training for Juvenile Justice System Decision Makers: Missing Children and Child Sexual Exploitation

The purpose of this program is to enhance the role of court personnel and other appropriate decision-makers in the order-making, review, monitoring, and enforcement of missing children and child sexual exploitation cases, from initial report to intake and investigation, court processing, disposition development and implementation. It will result in better information for system decision-makers about missing children and child sexual exploitation, allowing more informed decisions within the juvenile justice system.

Reunification of Missing Children

The purpose of this program is to identify promising strategies for helping families of missing children adjust to the return of a missing child. It will help ease the psychological trauma experienced by families whose missing child is returned.

Assistance to Missing and Exploited Children Private Voluntary Organization

The purpose of this program is to provide one-time financial assistance to private voluntary organizations involved in locating and providing services to missing children and their families. This program will expand the service base available to missing children and their families resulting in the likelihood of greater identification and reunification.

Curriculum Standards

The purpose of this initiative is to develop curriculum standards for educators to help insure the safety of all children. The curriculum standards will focus on preventing child abduction and exploitation. This will assist school systems to develop curricula to prevent children from becoming victims of abduction and exploitation.

Child Sexual Exploitation Training

The purpose of this project is to enhance the Law Enforcement Coordinating Council seminars that deal with child sexual exploitation. The seminars will train Federal, state, and local prosecutors on prosecuting and investigating child sexual exploitation cases. It will result in better, more

informed prosecutions, thereby increasing the likelihood of conviction.

Parental/Family Abductions

The purpose of this project is to address the legal, jurisdictional, and administrative issues faced by prosecutors in cases of parent/family abductions. It will guide community activities to control, prevent, and respond to the consequences of abduction.

Dated: May 26, 1988.

Verne L. Speirs,

Administrator, OJJDP.

[FR Doc. 88-12311 Filed 6-1-88; 8:45 am]

BILLING CODE 4410-18-M

Federal Register

Thursday
June 2, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91 and 135

Special Flight Rules in the Vicinity of the Grand Canyon National Park; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50-2]

Special Flight Rules in the Vicinity of the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This action revises the procedures for operation of aircraft in the airspace above the Grand Canyon up to an altitude of 14,500 feet above mean sea level (MSL). The regulations are adopted to comply with recent legislation requiring additional FAA regulations based on the recommendations of the U.S. Department of the Interior. The rule implements the recommendations of the Department of the Interior, with some modifications. The rule: (1) Establishes a Special Flight Rules Area from the surface to but not including 14,500 feet MSL in the area of the Grand Canyon; (2) prohibits flights below a certain altitude in each of five sectors of this area, with certain exceptions; (3) establishes flight-free zones from the surface to 14,500 feet MSL above large areas of the Park; (4) provides for routes for commercial tour operators and transient operators through the canyon area; and (5) retains certain existing terrain avoidance and communications requirements for flights in the area.

DATES: *Effective date:* September 22, 1988.

Comment date: Comments must be received on or before August 1, 1988.

Expiration date: Special Federal Aviation Regulation No. 50-2 expires on June 15, 1992.

ADDRESSES: Comments on the proposed permanent rule regulation may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25149, 800 Independence Avenue SW., Washington, DC 20591.

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this rule is final, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire on any portion of the rule. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25149." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3479. Communications must identify the special rule number of the document.

Background

On June 5, 1987, the FAA issued SFAR 50-1 (52 FR 22734, June 15, 1987), a special federal aviation regulation establishing flight regulations in the vicinity of the Grand Canyon National Park. That rule remains in effect until the effective date of the rule adopted in this action.

On August 18, 1987, legislation was enacted to require a study of aircraft noise impacts at a number of national parks and to impose flight restrictions at 3 parks: Grand Canyon National Park, Yosemite National Park in California, and Haleakala National Park in Hawaii. (Pub. L. 100-91).

Section 3 of Pub. L. 100-91 required the Secretary of the Interior to submit to the Administrator recommendations for action necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The recommendations were to provide for substantial restoration of the natural quiet and experience of the park. With limited exceptions, the recommendations were to prohibit the flight of aircraft below the rim of the Canyon and to designate zones that were flight free except for purposes of administration of underlying lands and for emergency operations.

Public Law 100-91 further required the Administrator of the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. The plan was to implement the recommendations of the Secretary without change unless the Administrator determined that implementing the recommendations would adversely affect aviation safety. In that event, the FAA was required, in consultation with the Secretary and after notice and opportunity for hearing, to revise the DOI recommendations to resolve the safety impacts and issue regulations implementing the revised recommendations in the plan.

Department of Interior Recommendations

Pursuant to section 3(b)(1) of Pub. L. 100-91, the Office of the Secretary of the Interior in December 1987 transmitted recommendations to the FAA for an aircraft management plan at the Park. The recommendations submitted included both rulemaking and nonrulemaking actions. The Department of the Interior (DOI) recommendations which were regulatory in nature and which could have required rulemaking action by the FAA for implementation may be summarized as follows:

1. Establish special use airspace (SUA), designated as the "Grand Canyon Special Flight Rules Area" and classified as prohibited airspace, over the geographical boundaries of the Grand Canyon from the surface to as high as 14,500 feet MSL.

2. Establish within the Grand Canyon Special Flight Rules Area three types of zones:

a. *Below Rim Level Zone.* Aircraft flight would be prohibited below the rim of the canyon with limited exceptions for NPS administrative flights; flights to Supai and Hualapai Indian reservations; and certain flights transporting persons to or from boat trips on the Colorado River. Rim level elevation of the Canyon will be considered as follows: (1) 6,000 feet MSL for the eastern section from Lees Ferry to Boundary Ridge, where the Grand Canyon visibly begins to widen; (2) 7,500 feet MSL from Boundary Ridge to Tuweep (outside the flight-free zones); (3) 6,500 feet MSL from Tuweep to Diamond Creek; and (4) 5,000 feet MSL for the western section from

Diamond Creek to the Grand Wash Cliffs.

b. *Flight-free Zones.* Flight would be prohibited, with the exception of the categories of flights excepted from flight below the rim, in 4 large areas together encompassing 530,000 acres or 44 percent of the total park area. The areas are set forth in detail in Notice 88–3 issued by the FAA on February 29.

c. *Above Rim Level Zone.* Flight above rim level and outside of flight-free zones, to 14,500' MSL, would be subject to special route and altitude regulations for separation of aircraft. In some cases, the space between flight-free zones is limited to 2-mile wide corridors in which any air tours and transient general aviation operations would be confined.

3. Retain the existing prohibition on operation of aircraft within 500 feet of any terrain or structure within the canyon.

4. Consider adoption of the "hemispherical rule" (§ 91.109), which specifies different altitudes for eastbound and westbound aircraft, for aircraft operation outside of the flight-free zones.

5. Modify or eliminate low-altitude Federal airways V–257, V–293, and V–210 to avoid the flight-free zones and preferably the entire Special Flight Rules Area. On a temporary basis while the matter is being studied, NPS recommended that V–257 and V–293 be relocated to travel between the Page VOR and the Tube City VOR, and that V–210 be moved 5 miles south of its present location in the vicinity of the Park.

Exceptions to the restrictions contained in the recommendations would be allowed only in an emergency, in the case of inclement weather, or if otherwise necessary for safety of flight. The Manager of the FAA Las Vegas Flight Standards District Office (FSDO) and the Superintendent, GCNP will jointly develop procedures to address these exceptions.

DOI also recommended that the FAA undertake several items that would not require rulemaking action at the present time. The action which the FAA will take in response to those recommendations is discussed in Notice 88–3.

Notice of Proposed Rulemaking 88–3

In order to provide public notice of and opportunity for comment on the DOI recommendations, as those recommendations would be implemented by FAA regulation, the FAA issued Notice of Proposed Rulemaking 88–3 on February 29, 1988 (53 FR 7096; March 4, 1988). The FAA proposal substantially accepted the area boundaries, altitudes, and flight restrictions contained in the DOI recommendations.

However, the FAA's preliminary review identified certain aspects of the recommended plan which could have safety ramifications for aircraft operations. The proposal described the safety concerns and requested public comment on potential safety problems. The notice contained a proposed rule which differed from the DOI recommendations in some respects, notably the number and configuration of flight corridors, as a proposed means of resolving the safety problems discussed. Comments were requested on all aspects of the DOI recommendations and the FAA proposal.

FAA Finding of Adverse Impact on Safety. On March 30, the FAA issued a formal finding that certain elements of the recommendations submitted by DOI, if adopted as received, would have an adverse impact on aviation safety. The FAA noted that the findings involved only a relatively small portion of the total recommendations made by DOI and that the FAA had accepted the DOI plan substantially as received.

A copy of the March 30 finding has been placed in the public docket. The FAA's safety concerns were summarized in the finding as follows:

1. A single, 2-mile-wide corridor ("Dragon corridor") is provided for southbound routing of all "circle" tours operating from Grand Canyon Airport and for a large number of tour flights operating from Las Vegas. DOI assumed, and the FAA agrees, that under the DOI plan the Grand Canyon Airport local tours would operate in a counter-clockwise direction, proceeding north through the Zuni Point Corridor, west across the Kaibab Plateau, and south through the Dragon corridor. Tours from Las Vegas would continue to cross Havasu Canyon and would then either proceed directly to Grand Canyon Airport or would turn northeast through the Fossil Canyon Corridor and south through the Dragon corridor. As a result, westbound circle tour traffic would meet a large proportion of eastbound Las Vegas traffic at the north end of the Dragon corridor. Opposite-direction flights would be turning into the same narrow strip of airspace. The direction of the turn would make observation of other aircraft difficult for pilots while in the turn, particularly from low-wing aircraft.

2. As a result of the reliance on the Dragon corridor and the configuration of that corridor, traffic exiting the corridor (near Cocopa Point) would merge with the Las Vegas traffic proceeding direct to Grand Canyon Airport from Havasu Canyon. These two streams of traffic include the large majority of arrivals at the Grand Canyon Airport, so the potential for traffic conflict in this area is significant.

3. The recommended plan eliminates the current route for straight-in approaches to Grand Canyon Airport Runway 21 from the northeast. As a result, more than 90 percent of arriving traffic would arrive at the edge of the airport traffic area in the same general location, with limited opportunity for altitude separation. (Terrain is approximately 7,000 feet MSL and air tour operations are limited to 10,000 feet MSL and below by passenger oxygen requirements.) This area is bounded on the north by the Bright Angel Flight Free Zone and, for practical purposes, is limited on the south by southwest departures during the typical Runway 21 operation. The funneling of arriving traffic (as many as 80 aircraft per hour in peak periods) into the same airspace west of the airport traffic not only would concentrate this traffic in a see-and-avoid environment but also would present the Grand Canyon Airport Air Traffic Control Tower with a problem in handling these arrivals.

4. The 2-mile width of the Zuni Point and Dragon corridors limits the room for separation of aircraft using those corridors. While not strictly a safety issue, navigation within the narrow corridors by transient pilots may not be practically attainable given the limited visual landmarks and lack of electronic navigation aids in certain areas of the canyon.

5. The Thunder River/Toroweap Flight-Free Zone has the effect of diverting north- and southbound traffic around the east or west ends of the zone. In the east, these flights would conflict with Las Vegas tour traffic using the western corridor northbound. On the west, the north/south traffic would conflict with operations into and out of Tuweep and Whitmore Airports. The fact that the frequency of the affected north/south flights may not be high does not diminish the importance of resolving the potential conflict.

6. The specification of a 7,500-foot MSL minimum flight attitude from Toroweap to Supai Point eliminates an additional flight stratum, from 6,500 feet MSL to 7,500 feet MSL, which would otherwise be available in this area. This airspace could be used to route flights to and from the Indian reservations, including river runner pickup operations, at an altitude different than that used by tour operations.

7. Application of the special rules to IFR operations, and relocation of the

three affected Federal airways, would impact IFR access to Grand Canyon Airport and IFR transient traffic. It cannot be determined whether a satisfactory alternate route structure can be developed until potential routings off other VOR stations in the area have been planned and flight-checked.

For each of the above issues, possible solutions to the problem identified that did not involve modification of the recommended plan were found to be either not feasible or to present a different safety impact. Accordingly, some revision of the recommended measures was determined to be necessary to resolve these issues.

FAA-Department of Interior Consultation. In addition to continuing informal contacts, representatives of the FAA and the National Park Service met on April 27 to discuss the elements of a final rule. The regulation adopted by the FAA reflects the agreements reached at that meeting. On May 17, the Office of the Secretary of the Interior sent a letter to the FAA Administrator outlining DOI's understanding of the agreement, and noting that only one area of difference remained—the use of the Tuckup Corridor by commercial air tour operations. The final rule adopted establishes the Tuckup Corridor, but, as explained more fully below, the FAA will not authorize air tour routes through that corridor. Accordingly, the FAA and DOI are in agreement on the content of the final regulation adopted.

Comments on Notice 88-3. More than 100 comments were received on the NPRM. Comments received for a brief period after the comment period closing date of March 25, as well as those received during the comment period, were considered in the adoption of this rule.

Most comments expresses either an interest in reducing aircraft noise at the Grand Canyon National Park or an interest in avoiding unnecessary flight restrictions for aircraft operations. The comments are discussed below by general issue.

I. *Compliance with Pub. L. 100-91.* Many commenters stated that the FAA proposal was inconsistent with the purposes of Pub. L. 100-91, in that it reduced the area of flight-free zones and, consequently, the size of the area in which the "natural quiet" of the canyon would be restored. Some of these commenters were critical of DOI, for making any accommodation for aircraft overflight of the canyon, and requested that all flights over the Grand Canyon be banned.

The FAA agrees that the intent of Pub. L. 100-91 can be considered the creation of flight-free areas to make large areas of the Grand Canyon National Park substantially free of aircraft noise. The rule adopted achieves this purpose. However, it was not the intent of the legislation to ban aircraft from overflying the Grand Canyon. In this regard, the FAA believes that viewing of the canyon from the air is a legitimate and valuable means of appreciating the beauty of the Grand Canyon. This policy is supported by the legislative history of Pub. L. 100-91 and the objectives stated by DOI in its December recommendations to the FAA. The agency further believes that the resources of the canyon can be protected without an exclusion of aircraft, which would have a major adverse impact on air travel through this area of the southwest. It is the intent of the rule adopted to permit the continuation of aerial viewing of the canyon, and air travel through the area, in a manner consistent with the stated purposes of section 3 of Pub. L. 100-91 to substantially restore the natural quiet of the Grand Canyon within the boundaries of the national park.

II. *General configuration of the Special Flight Rules Area (SFRA).* Few comments objected to the area boundaries recommended by the DOI or those proposed by the FAA, which were identical in most respects. Several commenters objected to the FAA proposal to establish the northern boundary of the SFRA at the Grand Canyon National Park boundary. DOI recommended a boundary further to the north, which included lands outside of the park and well north of the canyon's north rim. Other commenters supported the FAA boundary, to minimize the restriction on flights through the area.

Because the Forest Service and the Bureau of Land Management have not objected to the recommended boundary, with suitable provisions for access, the FAA has adopted the northern boundary as recommended.

Several commenters objected to the inclusion of a large area around Marble Canyon, in the northeast part of the Grand Canyon National Park. Objections were that the area unnecessarily restricted flight operations in the area, particularly in and out of Marble Canyon and Cliff Dwellers Lodge Airports, even though there are no identified aircraft noise problems or complaints in this area. The FAA believes that the SFRA must extend to the northern limit of the Grand Canyon National Park as recommended. However, the FAA agrees that the width of the area originally recommended by DOI, which extends the SFRA beyond the boundaries of the canyon proper or the National Park, should be reduced to facilitate aerial access to the two airports and transit through the area. This action will have no effect on the prohibition of low-altitude flight above the canyon and no impact on noise-sensitive areas.

Several commenters objected to the general ceiling of 14,499 feet MSL, proposed by the FAA to coincide with the top of the flight-free zones recommended by DOI. Because flight is prohibited to that altitude only within the flight-free zones, this subject is discussed in more detail below in connection with those zones. Alternate altitudes suggested were 9,500 feet MSL and 11,500 feet MSL. The FAA continues to believe that while flight through the SFRA should be permitted (outside of the flight-free zones and above the minimum flight levels), general rules for the transit of air tour and transient aircraft through this airspace should be provided by special rule. Accordingly, the ceiling of 14,499 feet MSL proposed in the NPRM is adopted, to provide a uniform ceiling to the entire area and to designate an area in which special operating rules will apply.

III. *Flight-free zones.* A large number of commenters favored the flight-free zones recommended by DOI, and a small number requested larger zones to further restrict aircraft flight. A common comment was that the zones, in order to be effective in providing noise-free areas within the canyon, must be large. The flight corridors proposed by the FAA, it was argued, resulted in a large number of smaller zones that did not provide central noise-free areas, since no part of the canyon was far from aircraft flight paths. Specific comments on the flight-free zones primarily related to the flight corridors between them, which are discussed below. One commenter requested elimination of the Shinumo Flight-Free Zone altogether, because the zone substantially restricts aviation in that area with little environmental benefit, in consideration of the small number of persons that use the area.

It is the FAA's intent to adopt the DOI flight-free zones as recommended, subject only to adjustment of the adjacent flight corridors as necessary to assure safe aircraft operations. In the rule adopted, the flight-free zones are substantially identical to those recommended by DOI, and the flight corridors proposed by the FAA have been eliminated and/or modified to achieve large flight-free zones. In the case of the Toroweap/Thunder River Flight-Free Zone, an area 1½ miles in radius has been extended around the

south side of Tuweep Overlook to provide a noise buffer to that point.

Flight-free zones: ceiling. FAA proposed the altitude recommended by DOI for the ceiling of the flight-free zones—14,499 feet MSL—specifying a limit one foot lower than 14,500 feet in order to permit use of that altitude. Some aviation commenter objected to the altitude as too high for safe operation and discriminatory toward general aviation operators, and suggested alternatives of 9,500 feet MSL and 11,500 feet MSL.

The FAA does not agree that the 14,499-foot altitude itself will result in unsafe operation. The altitude is simply too high for the performance and oxygen equipment of a large percentage of general aviation aircraft. Rather than encourage marginal operations over the top of the flight-free zones, therefore, the ceiling will, as DOI intended, require these aircraft to deviate around the zones. While potentially burdensome, particularly for transient general aviation operations, this requirement is not inherently unsafe and has been adopted.

In areas of the SFRA outside of the flight-free zones, the minimum altitudes range from 5,000 feet MSL to 10,000 feet MSL to permit transient operation through the area at altitudes separated from congested commercial tour routes.

IV. *Flight corridors.* The five 4-mile-wide flight corridors proposed by the FAA were addressed in virtually all of the comments received. Many commenters supported the three 2-mile-wide corridors recommended by DOI, and objected to the additional and wider corridors proposed by the FAA. Most of the comments on the FAA corridors were directed toward the "Shoshone Point Corridor" extending northeast from Grand Canyon Airport across the canyon. Several commenters suggested that alignment with VOR radials was not necessarily a benefit, since VOR signals often cannot be received at lower altitudes near the canyon due to terrain and distance from the stations. The FAA agrees and has reconfigured the corridors to rely on prominent terrain features as well as VOR signals, where possible.

Shoshone Point Corridor. Many commenters vehemently objected to the Shoshone Point Corridor because it crossed the canyon south rim near noise-sensitive overlooks, and because it passed over the canyon near popular trails used by a large number of Park visitors. The proposed corridor was in the center of the large Bright Angel Flight-Free Zone recommended by DOI, and would have diminished the noise benefits to be realized from that zone.

Pilots, aircraft operators and aviation organizations supported the purpose of the Shoshone Point Corridor—to relieve traffic conflicts at the north and south ends of the Dragon Corridor and to prevent an unacceptable concentration of arriving traffic at the western edge of the Grand Canyon Airport Traffic Area. Some of these commenters supported the Shoshone Point Corridor either without restriction, or with limitations to mitigate noise impact, including a limitation to one-way traffic descending for arrival at the airport from a relatively high altitude at low power settings.

Others commented that while there was a need to resolve the identified traffic conflicts to the west, the proposed Shoshone Point Corridor was simply too close to an environmentally sensitive area. One suggested alternative was a corridor that crossed Shoshone Point but extended much further to the east, to avoid the Bright Angel Trail and Phantom Ranch areas. This alternative is operationally feasible but was still objectionable to DOI because there would continue to be aircraft overflight of the central canyon area. Another alternative suggested was for aircraft proceeding southbound through the Dragon corridor to turn toward the airport after crossing the Colorado River. In conjunction with a widening of the north end of the Dragon Corridor, this would contribute to resolution of the conflicts identified by the FAA.

The rule adopted does not include the Shoshone Point Corridor. The FAA believes that, while the Shoshone Point Corridor was an ideal operational solution to certain safety problems with the DOI recommendations (in the Dragon Corridor and the approach to the airport traffic area), those problems can be resolved by alternate means. The alternate measures include a reconfiguration of the Dragon Corridor and special air traffic control procedures for arrivals and departures at Grand Canyon Airport. If at any time in the future it becomes apparent to the FAA that the alternate measures are insufficient to assure safety, the FAA would consider the option of approving airport approaches from the northeast over Shoshone Point until a new procedure could be developed.

Zuni Point Corridor. The FAA proposal placed a flight corridor between the Desert View and Bright Angel Flight Free Zones, as recommended by DOI, but modified the corridor by describing it in terms of VOR radials and DME arcs off the Grand Canyon VOR. Comments favored the simpler and more direct corridor recommended by DOI, and that version has been adopted in the final rule.

Dragon Corridor. Most of the aviation commenters had some comment on the Dragon Corridor ("Cocopa Point Corridor" in the NPRM). A number of commenters supported the FAA concern with conflicting traffic at the north end of the corridor, where eastbound and westbound traffic would meet head on while turning south into the 2-mile wide corridor, and at the south end of the corridor, where traffic exiting the corridor met flights inbound from Supai Point Grand Canyon Airport. Commenters suggested several solutions to the problems identified, including use of the Shoshone Point Corridor; widening the north end of the Dragon Corridor; widening the entire Dragon Corridor; and routing traffic southbound in the Dragon Corridor direct to the Grand Canyon Airport after crossing the Colorado River. Some non-aviation commenters stated that any safety problems could be resolved within the configuration recommended by DOI, and that no changes to the corridor should be made.

The FAA believes that traffic can be accommodated in the general routing plan recommended by DOI, with modifications to the Dragon Corridor as recommended. First, the northern entry to the corridor will be centered on the Dragon rock formation. Both eastbound and westbound aircraft will be required to turn before reaching the Dragon, assuring that opposing direction flights will remain separated throughout the turn into the corridor. Tour operators are required to announce reaching the Dragon on a common radio frequency, so pilots will be aware of other flights in the corridor at the same altitude. Fixed-wing air tour flights will be limited to one-way southbound operations, and transient traffic will be limited to altitudes of 10,500 feet MSL or higher. Helicopter operations will be able to operate in 2-way traffic at a different altitude from any fixed-wing traffic.

Aviation commenters also supported the FAA's concern that exit from the south end of the corridor presented two related problems—the mixing of corridor traffic with other traffic arriving from Las Vegas, and the concentration of virtually all traffic arriving at Grand Canyon Airport at the same general location on the west side of the airport traffic area. Of the alternatives suggested, the FAA believes that with the elimination of the Shoshone Point Corridor, the only practical solution is to route traffic southbound in the Dragon Corridor direct to the Grand Canyon Airport from the Colorado River.

effectively adding a small area to the corridor across the south canyon rim near Hermit's Rest (rather than Cocopa Point).

While this will result in an increase in aircraft noise in that area, there is a net benefit to the Park from the elimination of the Shoshone Point Corridor and the creation of a large Bright Angel Flight-Free Zone as recommended. Also, FAA will establish a dual procedure for air tour aircraft southbound in the Dragon Corridor. All arriving aircraft will contact the Grand Canyon Airport Tower as they cross the Colorado River. If traffic is light, the aircraft will be directed to continue in the corridor across Cocopa Point. If traffic is congested, the aircraft will be directed to proceed over the Hermit's Rest exist for a north base entry to the airport. Finally, because helicopters would operate between the airport and the south rim at an altitude below arriving fixed-wing traffic, helicopter operators could exist the Dragon Corridor at Cocopa Point and would not be permitted to proceed across Hermit's Rest. Therefore, operations in the Hermit's Rest area will be limited to the minimum number necessary for safe operation.

One commenter requested that the Dragon Corridor be configured so as to provide the maximum protection for Point Sublime, on the north Canyon rim. The FAA and DOI have agreed on a new configuration of the Dragon Corridor that serves the aviation objectives described above, but which prevents aircraft from approaching closer than one mile to Point Sublime.

Finally, the Dragon Corridor will consist of two levels. A 2-mile-wide corridor centered on the Dragon at the north end and Cocopa Point at the south end, with the cutoff over Hermit's Rest, will be established from 7,500 feet MSL to 10,499 feet MSL for tour routes. A 4-mile-wide corridor centered on the Page VOR 205° radial will be established from 10,500 feet MSL to 14,499 feet MSL for transient operations. The distinct corridors permit precise navigation by tour operators based on prominent geographical features, with which they are familiar, and permit navigation by VOR by transient pilots who would not always be familiar with terrain features.

Fossil Canyon Corridor. DOI recommended, and the FAA proposed, the "Fossil Canyon Corridor" between Fossil Canyon and Timp Point near Steamboat Mountain. A few commenters suggested the corridor was unnecessary. However, the majority of commenters supported the corridor either because it was part of the DOI proposal, or because it was necessary for certain tour routes from Las Vegas. The final rule adopts this corridor as recommended by DOI.

Tuckup Canyon Corridor. The additional corridor through the Thunder River/Toroweap Flight-Free Zone proposed in the NPRM was opposed by commenters who supported the DOI recommendations. Aviation comments tended to be divided according to interest in north-south operations in this area. General aviation pilots and at least one tour operator expressed the need for a route through the area, while tour operators who would not personally use such a route commented that it was unnecessary. Information developed at the public hearings and submitted in the docket also indicated that the area is used by only a very few persons on an annual basis.

The FAA continues to believe there is a safety interest in routing north-south traffic directly through this area, to keep this traffic clear of activity around Toroweap Airport and the narrow northern end of the Fossil Canyon Corridor. The FAA agrees with comments that the corridor should be aligned on a north-south direction, to minimize the area affected and to avoid the Tuckup Canyon and Kanab Creek areas, which are used on occasion by back country hikers. Accordingly, the Tuckup Corridor is adopted in a configuration which involves less area and which avoids noise-sensitive areas to the extent possible.

DOI, while agreeing that a corridor would improve safety for transient operations, opposed the use of the Tuckup Corridor for air tour flights. FAA believes that the transit of commercial air tour operations in the area can be safely accommodated by other measures, and will not authorize air tour routes through the corridor.

Width of the flight corridors. FAA proposed a corridor width of 4 miles, in contrast to the 2-mile width recommended by DOI. Many commenters objected to the wider corridors because of the corresponding reduction in the size of the flight-free zones, and the fact that aircraft would be somewhat closer to the noise sensitive areas that DOI was seeking to protect. One tour operator supported the 2-mile-wide corridors, but virtually all other aviation commenters supported a width of 4 miles, or in several cases 5 or 8 miles. Commenters acknowledged that air tour pilots familiar with the canyon would have no difficulty navigating a 2-mile corridor, but argued that clouds, turbulence, and other weather conditions made it a practical necessity to have room to maneuver. Commenters representing transient pilot operations favored 4-mile or wider corridors because of the difficulty of locating a 2-mile-wide corridor over the canyon terrain.

Because air tour operations can normally be navigated within a 2-mile-wide corridor, the FAA is adopting corridors that will be 2 miles wide from the floor to 10,500 feet MSL and 4 miles wide from 10,500 feet MSL to 14,499 feet MSL. In general, 10,500 feet MSL is the lowest altitude that may be used by transient operations in the corridors and 9,500 feet MSL is the highest used by air tour operators. Air tour operators will be authorized to deviate from their routes if necessary to maintain safety of flight, but in general must operate within the 2-mile corridors.

The flight corridors will be charted as 4 miles wide with a floor of 10,500 feet MSL, since the charts are intended for the use of transient and general aviation operations. The 2-mile-wide corridors at lower altitudes will be included in tour operator operations specifications but will not otherwise be charted.

V. *Minimum flight altitudes.* A number of comments were received on DOI's and FAA's respective designations of rim level elevations in various sections of the Grand Canyon. In the NPRM, the FAA found that the rim level was slightly lower than the DOI recommended figures in 3 of the 4 sectors of the canyon. However, the DOI figures were adopted as minimum flight levels in all cases except between Toroweap and Supai Point, where the FAA level of 6,500 feet MSL was adopted in lieu of the DOI figure of 7,500 feet MSL.

A number of commenters objected to the FAA proposal for permitting flights below the canyon rim. Since the FAA proposal did not, in fact, propose to allow flights below the rim, the FAA assumes the commenters were reacting to some other party's characterization of the proposal and not to the FAA document itself.

Many commenters supported the higher DOI elevations, and two commenters requested levels higher than recommended by DOI in the Marble Canyon and west canyon areas. Aviation commenters supported the FAA rim level designations or, in some cases, altitudes lower than designated by the FAA, and requested that minimum flight altitudes be set at the designated rim level.

The FAA continues to believe that the rim level elevations proposed in the NPRM, with one change, are appropriate for aviation purposes. The exception is the area north of Boundary Ridge, where DOI found the rim level to be 6,000 feet

MSL and FAA found it to be 5,500 feet MSL. One commenter noted, correctly, that the terrain slopes downward to the north along Marble Canyon, and that the area is more appropriately divided into two zones—6,000 feet MSL from Boundary Ridge to North Canyon; and 5,000 feet MSL from North Canyon to Lees Ferry. The FAA agrees with the comment, and the rim level determination is revised accordingly.

The higher altitudes recommended by DOI are adopted as minimum flight altitudes, without regard to rim elevation, with two exceptions. First, as proposed in the NPRM, the minimum flight altitude between Toroweap and Supai Point is 6,500 feet MSL rather than the 7,500 feet MSL recommended by DOI. This is in recognition of the lower terrain elevation in this area and the need for additional flight stratum to safely accommodate air tour, transient, and river runner pickup operations that occur in this part of the canyon.

Second, a minimum flight altitude of 5,000 feet MSL is established for the area between North Canyon and Lees Ferry. Rim level elevation in this area varies from approximately 3,500 feet MSL to 5,000 feet MSL, and a minimum flight altitude higher than 5,000 feet MSL would interfere with safe access to Cliff Dwellers Lodge and Marble Canyon Airports. As it is, special procedures will be necessary to permit operations below "rim" level to land and take off at these airports. The minimum flight altitude of 6,000 feet MSL between Boundary Ridge and North Canyon is adopted as recommended.

VI. *Flight restrictions: general.* In general, commenters supported the restrictions recommended by DOI and proposed by the FAA—basically, no flights below minimum flight levels or within the flight-free zones except for certain operations necessary for emergency services, park maintenance, and access to Indian reservation lands. The FAA is adopting the general restrictions as proposed in the NPRM, with certain exceptions based on requests that specific provisions apply in certain circumstances or certain areas of the SFRA.

Helicopters. Helicopter operators and pilots commenting on the proposal made a number of requests for special provisions in the rule or associated procedures, including a revised Shoshone Point Corridor to the east of the corridor proposed by the FAA; 2-way traffic in flight corridors at the same altitude for helicopters; and designation of the lowest available altitudes for helicopters. As discussed above under "Flight Corridors," a Shoshone Point Corridor was rejected in favor of revisions to the Dragon Corridor and special procedures in the Grand Canyon Airport traffic area.

Two-way traffic at the same altitude is generally not permitted under the procedures adopted, in consideration of the general value of separating opposite-direction traffic and the narrowness of the corridors recommended by DOI. However, there is a safety benefit for helicopters, in that this procedure permits them to cross the canyon and return to the south rim without the necessity of crossing the north rim. The high terrain of the north rim presents an obstacle, particularly to aircraft whose performance begins to degrade at that altitude, and this procedure avoids one-way traffic toward the north rim at low altitude. The adopted procedure also will permit helicopter air tour operators to use a discrete altitude during all phases of flight on operations from Tusuyan, thereby avoiding potential conflict with fixed-wing traffic.

Accordingly, the FAA will specify 2-way same-altitude traffic only for helicopter air tour operations and only for operations to, from, and in the Dragon Corridor and Zuni Point Corridor. This procedure may be conducted safely due to the low airspeed and high visibility of helicopters, and due to the fact that the procedure will be authorized for only 2 commercial operators (at present) whose pilots are experienced with the operation and are in continuous communication on a common radio frequency.

The lowest available flight altitude in the part of the canyon traversed by the Dragon Corridor is 7,500 feet MSL. Fixed-wing tour flights will be entering the corridor only from the north, over the north canyon rim, and, therefore, will be at altitudes of at least 8,500 feet MSL. Accordingly, the altitude of 7,500 feet MSL is available for helicopter tours in the Dragon Corridor. It should be noted that this procedure will contain helicopter tours totally within an area and at an altitude specified for air tours in the original DOI recommendations.

Winter operations in the vicinity of the north rim. The Bright Angel Flight-Free Zone recommended by DOI, and adopted by the FAA, requires flights that now operate over the canyon to operate over the high terrain of the canyon's north rim area. Both fixed-wing and helicopter operators noted that clouds and low visibility above the north rim in the winter season make winter operation above that area undesirable. These operators urged that the FAA adopt a winter procedure permitting tour flights to operate at the same altitudes but slightly south of the north rim over the canyon, to avoid the terrain in low-visibility conditions. The commenters noted that, at that time of year, the north rim is inaccessbile and the canyon floor is virtually unused; therefore, there is no noise impact of operations above the canyon for that limited time.

The National Park Service has noted that operations south of the north rim, over the canyon, would have a noise impact on the south rim, which is used throughout the year. Accordingly, NPS opposes the adjusted winter route through the canyon. Therefore, the FAA is not formally adopting a different procedure for winter tour operations. The FAA notes that the rule provides for deviations from the route, for purposes of safety, where unforeseen weather conditions prevent continued legal VFR operation on the approved route.

Provisions for general aviation/transient flights. Several general aviation commenters suggested that the plan recommended by DOI was discriminatory toward general aviation, because the 14,500-foot MSL ceiling of the flight-free zones effectively eliminated most general aviation aircraft from the area. The FAA agrees that that is the effect of the recommended ceiling. However, while the flight-free zones do interfere with flight through the area, the longer flight routes that result do not present a safety problem. Accordingly, the FAA has adopted the flight-free zones to the altitude recommended even though many aircraft will not be able to operate over the tops of the zones.

Several commenters requested that general aviation operators have access to the SFRA equivalent to that of commercial air tour operators, although not necessarily in the same airspace. Some tour operators specifically requested that general aviation and air tour flights be assigned separate altitudes and/or routings.

The final rule adopted provides a high degree of access for transient flight through the area, at altitudes that will keep transient and commercial tour operators in separate airspace. Within the flight-free zones, general aviation operations are subject to the same restrictions as commercial tour operations. Outside of the flight-free zones, the rule adopted provides separate altitudes for the use of commercial air tour aircraft and transient aircraft in the four flight corridors and in most other areas. The FAA estimates that approximately 85% of the flights throught the SFRA are commercial air tours, using specific procedures approved by the FAA Flight Standards District Office. Transient

pilots cannot in all cases be expected to navigate the corridors with the precision of the air tour pilots, or to be as familiar with potential emergency landing sites. The FAA continues to believe, therefore, that assignment of the lower flight altitudes to the air tour operators and the next higher altitudes to transient operators is a fair and reasonable allocation of the limited airspace available.

Both air tour and transient flight altitudes have been adjusted upward as a result of the higher minimum flight altitudes recommended by DOI. The minimum altitudes that may be provided for tour operators in their operations specifications are as discussed above under "Minimum Flight Altitudes." Minimum altitudes for transient operations are 8,000 feet MSL west of Diamond Creek; 9,000 feet MSL from Diamond Creek to Supai Point; 10,000 feet MSL from Supai Point to Boundary Ridge; and the same as for tour operations from Boundary Ridge to Lees Ferry (6,000 feet MSL south of North Canyon and 5,000 feet MSL north of North Canyon). Minimum altitudes charted will be those applicable to transient operations.

Above these altitudes, and outside of corridors and flight-free zones, transient operations are not restricted to any particular route while in the SFRA. The FAA specifically requests comments on whether the rules adopted provide sufficient access through the area for transient operators, and at the same time provide sufficient separation of transient and air tour operations.

Flights to and over areas outside the Grand Canyon National Park. DOI recommended a SFRA similar to that in effect under SFAR 50–1, which includes areas outside of the National Park boundaries. Comments were received from the two Indian tribes whose reservations are partly within the SFRA, and from the Bureau of Land Management (BLM) of the Department of the Interior, which administers land north of the Grand Canyon. Legal counsel for the Havasupai Tribe objected to the routing of tour flights over the reservation that results from the prohibition of flights over the Park. The tribe requested continued air access to the reservation for limited purposes within the control of the tribe.

The Truxton Canyon Agency of the Bureau of Indian Affairs, on behalf of the Hualapai Indian Tribe, objected to any limitation on flights above the Hualapai Reservation for purposes of the management objectives of the Grand Canyon National Park. The tribe requested unrestricted air access to the reservation for flights sanctioned by the tribe. BLM commented that inclusion of its lands within the SFRA, under the restrictions contained in the proposal, would adversely affect the ability of BLM and other affected Federal agencies to meet mandatory management responsibilities.

With respect to tour routes over the Havasupai Reservation, the FAA does not anticipate that tour routes under the rule adopted will be significantly different from those currently in use over the reservation area. However, the FAA invites tribal representatives to contact the Flight Standards District Office to provide information on areas of the reservation in which the tribe objects to overflights. To the extent practically consistent with safety, these preferences will be incorporated in the tour routes specified in the operators' operations specifications.

On the issue of aerial access to lands within the SFRA, it is the intent of the FAA to ensure access to lands outside of the Grand Canyon National Park at the discretion of the landowner or responsible land administration agency. Aircraft operated by or under contract to the tribe or agency will have access to all points within the affected lands, under an authorization issued by the Flight Standards District Office. The authorization would normally specify direct entry and exit routes and would limit flights within flight-free zones to those necessary. Agencies such as BLM and the U.S. Forest Service, with aerial surveillance responsibilities, would be authorized for general unrestricted overflight by agency or contractor aircraft.

Limitation on the number of tour flights. Several commenters suggested that FAA limit the number of flights in the vicinity of the Park, either as a means of reducing aircraft noise or as a solution to the safety problems discussed in the NPRM. DOI did not include a recommendation to limit or reduce the number of flights, and the FAA does not find any independent justification for such a program, which would be difficult to administer. Also, a reduction in the number of flights (short of a total ban, which was not contemplated by Congress or DOI) is not an adequate solution to the safety problems identified.

Access to GCN. Several aviation commenters objected to any restriction on access to Grand Canyon National Park Airport. The Bright Angel Flight-Free Zone recommended by DOI creates a 7,000 foot barrier 5 miles north of the airport, from approximately the 300° radial on the northwest to the 070° radial on the northeast. The restriction on access to the airport from the north was intended by DOI, to provide noise mitigation to the south rim overlooks and the heavily used areas of the central canyon. To the extent the recommended restriction was an inconvenience for aircraft arriving from the north (or on air tours from the west), but not unsafe, Pub. L. 100–91 required that the recommendation be adopted without change.

The safety problem with the recommendation identified by the FAA was not with the existence of the flight-free zone itself, but rather with the side-effect of requiring all arriving traffic to approach the airport from the remaining unrestricted quadrants. In actuality, virtually all arriving traffic comes from Las Vegas or other points to the west. Deprived of the option of circling over the canyon and approaching the airport from the northeast, on a straight-in approach to Runway 21, these flights will enter the airport traffic area from the west side. The airspace used by these arrivals is limited on the north by the 300° radial, which defines the Bright Angel Flight-Free Zone, and on the south by the departure traffic taking off from Runway 21 (approximately the 210° radial). Usable altitudes are similarly limited by the high terrain.

The Shoshone Point Corridor proposed by the FAA in Notice 88–3 would be a simple and effective solution to this situation. However, in view of objections to the corridor by DOI and many public commenters, due to its potential noise impact on the central canyon area, the FAA has adopted an alternate solution. First, as discussed above, the Dragon Corridor will be reconfigured to bring fixed-wing tour aircraft into the airport traffic area over the Hermits Rest area.

Second, special procedures will be applied for commercial operators approaching the Grand Canyon Airport. Each commercial operator authorized to conduct air tours in the SFRA will be required to enter into a letter of agreement with the Grand Canyon Air Traffic Control Tower for arrival and departure procedures. The operator's operations specifications will incorporate this requirement and incorporate the resulting agreement by reference. The procedures thus established will not be burdensome for operators, but will ensure that: (i) Arriving flights contact the tower in advance of arriving at the airport traffic area, for sequencing; (ii) arriving flights will be distributed in a pattern that permits efficient handling by the tower; and (iii) there is no conflict between arrival and departure patterns.

Because transient operations are a relatively small portion of total Grand Canyon Airport operations, no special procedures will be established for transient arrivals at this time. However, if the need arises, the FAA may establish such procedures in the future.

Airways/IFR. In the NPRM, the FAA Proposed to apply the recommended restrictions to Instrument Flight Rules (IFR) operations, but deferred a decision on the relocation of Federal Airways that currently cross the Grand Canyon. Many commenters supported the DOI recommendations and urged that the airways be moved. Aviation commenters generally requested that the airways be retained and that IFR operations not be affected by new rules. Some of these commenters felt strongly that surface exposure to aircraft noise (at altitudes of more than 9,000 feet MSL or 7,000 feet above the surface) did not justify elimination of IFR operations through the area.

DOI has affirmed its interest in relocation of the airways to avoid overflight of certain areas of the Grand Canyon National Park. The FAA is not rejecting the recommendation, but is unable to alter the airway structure within the time frame required for this rulemaking by Pub. L. 100–91. In order to revise the airway structure as requested, the FAA will need to determine whether alternate airways can meet IFR traffic needs in this area. If not, relocation of the airways would require that FAA develop and flight-check alternate routes off existing VOR stations and/or establish one or more additional VOR stations to support new airways.

Not all routes between facilities in this area are available, because terrain and magnetic disturbances render signals unusable. Accordingly, the FAA is unable to determine the feasibility of relocating all airways as requested. At this time, however, the FAA intends to begin processing three new airways: (i) between the Page VOR and Tuba City VOR, to provide a low-altitude alternate to Airway V–293 that does not pass through the SFRA; (ii) between Tuba City VOR and Grand Canyon VOR with a slight dogleg to the south to avoid the Desert View Flight-Free Zone; and (iii) between Peach Springs VOR and St. George VOR.

In the interim, the FAA has adopted a regulation that is applicable to IFR operations, with an exception for pilots who are complying with ATC instructions. This provision is intended primarily to permit the descent through 14,500 feet MSL by aircraft approaching Las Vegas, and under the control of Las Vegas Approach Control. Descents would normally not be below 14,500 feet until west of Rent Intersection.

The rule would require transient IFR operations using one of the 3 airways through the area to remain at altitudes of 14,500 feet MSL or higher. Aircraft unable to use these altitudes would be required to file for a different route to avoid the SFRA. The effective date of the applicability of the rule to IFR operations will be March 19, 1989, to permit time for the alternate airways to be established. The delayed effective date will have little environmental impact because of the small number of transient low-altitude IFR operations through the area in the winter months.

Military operations. The Department of the Air Force, through the Representative to the FAA Western Pacific Region, concurred with the general purpose and concept of the DOI recommendations, but noted specific problems for the Air Force that would result. Specifically, the SFRA and flight-free zones would prohibit or require modification of several low-level military training routes through the area. These routes generally pass along the edge of the canyon area and not over central or especially noise-sensitive locations. The Air Force requested an exemption or waiver of the rules to permit some degree of military training on or near existing routes.

It is FAA's understanding that DOI is in agreement that some level of military training on the periphery of the regulated area is highly important to the military and will have no significant effect on noise levels in the Park. Accordingly, the FAA is in the process of discussions with DOI and the Air Force on the Air Force's request.

Weather deviations. Several commenters, including both helicopter and fixed-wing aircraft operators, noted the special problems with operating an aircraft in the canyon area presented by weather conditions characteristic of the area. Examples cited were strong gusty winds and thermals; thunderstorms and rain squalls; and in winter, snow squalls and low visibility. In the absence of flight restrictions, pilots have the flexibility to maneuver to avoid unforeseen conditions. SFAR 50–1 substantially retained this flexibility by permitting flight on an east-west route above the central canyon area. The restrictions recommended by DOI, by eliminating the east-west route and requiring most flights to cross the north rim, and by resticting flights to 2-mile-wide flight corridors, greatly reduce the ability of pilots to avoid weather conditions.

The FAA has essentially adopted the configuration of the flight-free zones and flight corridors recommended by DOI, and there will be no east-west flight route over the canyon area below 14,500 feet MSL. The rule maintains safety in two ways. First, helicopter air tours will be permitted to reverse direction in the Dragon Corridor and return to the south rim at the same altitude, avoiding the necessity of climbing over the north rim. Second, the rule provides that pilots may deviate from course to maintain safety of flight in the avoidance of other aircraft or unsafe weather conditions.

VII. *Public process.* Several commenters objected to the relatively brief comment period (24 days) and to the issuance of the notice only one day prior to the hearings. The expedited rulemaking timetable in this case was necessitated by the relatively brief time period provided by Pub. L. 100–91. Notice of the public meetings was provided by publication in the **Federal Register**, on February 8, as early as the reservation of facilities could be confirmed. Also, the comment period was open as long as possible before the next agency action was required under Pub. L. 100–91, on March 28.

VIII. *Effective date.* Several commenters requested that the effective date of the final rule be delayed until September or October 1988, to avoid a substantial change in the tour routes and procedures in the middle of the busy summer season.

The FAA agrees that a changeover in the tour routes and transient procedures in the summer would not be consistent with safety. Also, the next sectional aeronautical chart that includes the Grand Canyon area will not be published until late September, so it would not be feasible to provide notice to transient pilots of the new procedures before that time. It would be unacceptable from a safety standpoint to implement a substantial change in flight procedures before the new procedures could be shown on charts.

Finally, the implementation of certain aspects of the regulation adopted will require additional time. Each of the tour operators will need to submit to the Flight Standards District Office its proposed tour routes under the new rules. The FSDO must then reconcile the routes and, in coordination with the operators, determine the final tour routes that will be specified in each operator's operations specifications. Also, each of the major tour operators will be required to enter into a letter of agreement with the Grand Canyon Airport Control Tower. Development of the letters of agreement cannot be made

final until operators are relatively certain of the details of their respective tour routes. Accordingly, both the FSDO and the air traffic personnel will benefit from the time to develop adequate procedures.

In consideration of the above, the FAA is making the regulation effective on September 22, 1988, coincident with publication of the sectional chart including the new regulations and procedures. As noted above, the effective date for applicability of the rule to IFR operations will be April 6, 1989.

The Special Federal Aviation Regulation

In consideration of the comments received in response to Notice 88–3, and after extensive consultation with the Office of the Secretary of the Interior in accordance with Section 3.(b)(2) of Pub. L. 100–91, the FAA is adopting an amendment to Special Federal Aviation Regulation (SFAR) 50–1 to implement recommendations submitted by the Department of the Interior pursuant to Section 3.(b)(1) of that law. To the extent the rule adopted varies from the DOI recommendations, the FAA has sought to develop alternative measures which are acceptable to DOI and which promote the purposes of Pub. L. 100–91. DOI has participated in this effort, and the final rule has received the general approval of the Office of the Secretary of the Interior. In summary, the amendments will do the following:

1. Raise the ceiling of the Grand Canyon National Park Special Flight Rules Area from 9,000 feet MSL to but not including 14,500 feet MSL. The restrictions that apply in the airspace will be essentially as requested by DOI.

2. Alter the boundaries of the existing Special Flight Rules Area to include the northeast extension of the canyon to Lees Ferry.

3. Prohibit operation by aircraft below certain minimum altitudes, with specific exceptions that provide for the limited exceptions contained in Pub. L. 100–91: (a) NPS administrative flights; (b) flights required for the transportation of persons and supplies to and from Supai Village and the lands of the Havasupai Indian Tribe of Arizona, and (c) flights that operate on a direct route between a point on the North Rim outside of the Park and locations on the Hualapai Indian Reservation (as designated by the tribe) and whose sole purpose is transporting individuals to or from boat trips on the Colorado River and any guide of such a trip.

Minimum allowable flight altitudes in each of 5 sectors of the canyon are (1) 5,000 feet MSL for the eastern section from Lees Ferry to North Canyon; (2) 6,000 feet MSL from the North Canyon to Boundary Ridge, where the Grand Canyon visibly begins to widen; (3) 7,500 feet MSL from Boundary Ridge to Supai Point (Yumitheska Point); (4) 6,500 feet MSL from Supai Point to Diamond Creek; and (5) 5,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

Higher minimum flight altitudes are specified for transient general aviation operations outside of flight-free zones and flight corridors between Grand Wash Cliffs to Boundary Ridge: (1) 10,000 feet MSL from Boundary Ridge to Supai Point (Yumitheska Point); (2) 9,000 feet MSL from Supai Point to Diamond Creek; and (3) 8,000 feet MSL for the western section from Diamond Creek to the Grand Wash Cliffs.

4. Prohibit operation in four "flight-free zones" unless necessary for the purposes enumerated in paragraph 3 above for flight altitudes. The flight-free zones are:

(a) *Desert View Flight Free-Zone.* An area around the Desert View Overlook. The area between the Desert View and Bright Angel/Shinumo Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel Flight-Free Zone.* An area substantially identical to the Bright Angel Flight-Free Zone recommended by DOI.

(c) *Shinumo Flight-Free Zone.* An area substantially identical to the Shinumo Flight-Free Zone recommended by DOI. The Dragon Corridor would be in the same location as the central flight corridor recommended by DOI, but would be widened at the north end and would incorporate an additional routing from the Colorado River southeast over Hermits Rest.

(d) *Toroweap/Thunder River Flight Free Zone.* An area nearly identical to the Toroweap/Thunder River Flight-Free Zone recommended by DOI, except for an additional north-south flight corridor west of Havasu Canyon. ("Tuckup Canyon Corridor"). The flight corridor between the Bright Angel/Shinumo and Toroweap/Thunder River Flight-Free Zones ("Fossil Canyon Corridor") would be retained substantially as recommended by DOI.

A total of four corridors for aircraft flight above minimum flight altitudes are provided through or between the zones. The description of the zones in some cases has been modified to use aviation terminology and references to navigation aids, where possible. Except for the Tuckup Corridor west of Havasu Canyon, and the modifications to the Dragon Corridor, the boundaries and area coverage of the zones are essentially as recommended by DOI.

5. Specify routes and altitudes for operation in the four corridors between and through the flight-free zones and outside of the zones. The procedures replace the transient routes contained in SFAR 50–1.

6. Retain the existing prohibition on flight closer than 500 feet to any terrain or structure in the canyon, except when necessary or when specifically authorized for certain purposes.

7. Retain the existing requirement to monitor a common frequency in each sector of the canyon. The requirement for air tour operators and other specially authorized flights to make position reports is deleted from the rule as unnecessary, because it is included in the authorizations for these operators.

Comment Period

This action is a final rule. However, because the rule includes specific details that were discussed only by general subject in the notice, a comment period is being provided. Comments received will be used in any consideration of future changes to the rule. Comments on the rule are due by August 1, 1988. Comments may be sent to the address listed under **"ADDRESSES"** above.

Environmental Review

An environmental assessment of the rule adopted and a Finding of No Significant Impact have been placed in the rules docket. In summary, the assessment concluded that, as a result of the rule adopted, certain areas of the Grand Canyon will receive less aircraft noise than under existing regulations, and others, in particular the Hermits Rest area of the south canyon rim, would receive a slight increase in perceived aircraft noise. However, in consideration of the volume of traffic, the altitude of flight routes, and the noise characteristics of the aircraft typically used in canyon flights, the FAA has determined that no significant environmental impact will result from the new rules.

Economic Evaluation

The Department of the Interior, in developing the recommendations submitted under Pub. L. 100–91, prepared a cost-benefit analysis of the proposal. This analysis was submitted with the DOI recommendations on December 29 and has been included in the FAA public docket for this rulemaking. The DOI analysis concluded that, on balance, in view of the minimal cost expected to the air tour operators and the significant benefits to park resources and visitors, the rules

recommended by DOI would be cost-beneficial.

FAA Evaluation

The FAA does not have quantitative information that would tend to either support or alter the conclusions of the DOI analysis. Several air tour operators commented that the DOI recommendations, if implemented, would have an adverse economic effect on their business.

The FAA may not consider economic impact in this rulemaking. Accordingly, comments on the economic impacts of the proposed regulation have been included in the docket but have not been addressed.

Regulatory Flexibility

The Regulatory Flexibility Act of 1980 requires agencies to identify rules that will have a significant economic impact on small entities, including small businesses. The annualized threshold of significant economic impact for a Part 135 air taxi with 9 or fewer aircraft is considered by the FAA to be $3,700 (in 1986 dollars). On information currently available, the FAA cannot certify that the proposed rule would not have a significant effect on a substantial number of small entities. However, the FAA has not conducted a regulatory flexibility analysis of the proposed rule because the provisions of Pub. L. 100–91 preclude the adoption of alternative measures.

For the reasons set forth above, the FAA has determined that this proposed amendment (1) is not a major rule under Executive Order 12291, and (2) is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11024; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which has been construed to preempt state law regulating the same subject. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 91 and 135

Aircraft, Aviation safety, Air taxi and commercial operators, Grand Canyon.

The Proposed Special Federal Aviation Regulation

For the reasons set out above, the Federal Aviation Administration is amending 14 CFR Parts 91 and 135 as follows:

PARTS 91 AND 135—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421, 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

3. By redesignating Special Federal Aviation Regulation No. 50–1 as Special Aviation Regulation 50–2 and revising it to read as follows:

Special Federal Aviation Regulation No. 50–2

Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

Section 1. *Applicability.* This rule prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area:

That airspace extending upward from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at lat. 36°09'30" N., long. 114°03'00" W.; northeast to lat. 36°14'00" N., long. 113°09'50" W.; thence northeast along the boundary of the Grand Canyon National Park to 36°22'55" N., long. 112°52'00" W.; to lat. 36°30'30" N., long. 112°36'15" W. to lat. 36°21'30" N., long. 112°00'00" W. to lat. 36°35'30" N., long. 111°53'10" W., to lat. 36°53'00" N., long. 111°36'45" W. to lat. 36°53'00" N., long. 111°33'00" W.; to lat. 36°19'00" N., long. 111°50'50" W.; to lat. 36°17'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'55" W.; thence counterclockwise via the 5 statute mile radius of the Grand Canyon Airport airport reference point (lat. 35°57'09" N., long. 112°08'47" W.) to lat. 35°57'30" N., long. 112°14'00" W.; to lat. 35°57'30" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to lat. 35°38'30" N., long. 113°27'30" W.; thence counterclockwise via the 5 statute mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long. 113°36'00" W.; thence to the point of beginning.

Section 2. *Definitions.* For the purposes of this special regulation.

"Flight Standards District Office" means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

"Park" means the Grand Canyon National Park.

"Special Flight Rules Area" means the Grand Canyon National Park Special Flight Rules Area.

Section 3. *Aircraft operations: general.* Except in an emergency, no person may operate an aircraft in the Special Flight Rules Area under VFR on or after September 22, 1988, or under IFR on or after April 6, 1989, unless the operation—

(a) Is conducted in accordance with the following procedures:

Note: THE FOLLOWING PROCEDURES DO NOT RELIEVE THE PILOT FROM SEE-AND-AVOID RESPONSIBILITY OR COMPLIANCE WITH FAR 91.79.

(1) Unless necessary to maintain a safe distance from other aircraft or terrain—

(i) Remain clear of the areas described in Section 4; and

(ii) Remain at or above the following altitudes in each sector of the canyon:

Eastern section from Lees Ferry to North Canyon and North Canyon to Boundary Ridge: as prescribed in Section 5.

Boundary Ridge to Supai Point (Yumitheska Point): 10,000 feet MSL.

Supai Point to Diamond Creek: 9,000 feet MSL.

Western section from Diamond Creek to the Grand Wash Cliffs: 8,000 feet MSL.

(2) Proceed through the four flight corridors described in Section 4 at the following altitudes unless otherwise authorized in writing by the Flight Standards District Office:

Northbound

11,500 or
13,500 feet MSL

Southbound

10,500 or
12,500 feet MSL.

(b) Is authorized in writing by the Flight Standards District Office and is conducted in compliance with the conditions contained in that authorization. Normally authorization will be granted for operation in the areas described in Section 4 or below the altitudes listed in Section 5 only for operations of aircraft necessary for law enforcement, firefighting, emergency medical treatment/evacuation of persons in the vicinity of the Park; for support of Park maintenance or activities; or for aerial access to and maintenance of other property located within the Special Flight Rules Area. Authorization may be issued on a continuing basis.

(c) Is conducted in accordance with a specific authorization to operate in that airspace incorporated in the operator's Part 135 operations specifications and approved by the Flight Standards District Office.

(d) Is a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center.

(e) Is conducted within 3 nautical miles of Whitmore Airstrip, Pearce Ferry Airstrip, North Rim Airstrip, Cliff Dwellers Airstrip, or

Marble Canyon Airstrip at an altitude less than 3,000 feet above airport elevation, for the purpose of landing at or taking off from that facility. *Or*

(f) Is conducted under and IFR clearance and the pilot is acting in accordance with ATC instructions. And IFR flight plan may not be filed on a route or at an altitude that would require operation in an area described in Section 4.

Section 4. *Flight-free zones.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area within the following areas:

(a) *Desert View Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N., Long. 111°46'20" W. to 35°59'30" N., Long. 111°52'45" W.; to Lat. 36°04'50" N., Long. 111°52'00" W.; to Lat. 36°06'00" N., Long. 111°46'20" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the western boundary of the zone. The area between the Desert View and Bright Angel Flight-Free Zones is designated the "Zuni Point Corridor."

(b) *Bright Angel Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 35°59'30" N, Long. 111°55'30" W; to Lat. 35°59'30" N, Long. 112°04'00" W; thence counterclockwise via the 5-statute-mile radius of the Grand Canyon Airport point (Lat. 35°57'09" N., Long. 112°08'47" W.) to Lat. 36°01'30"N., Long. 112°11'00" W; to Lat. 36°06'15" N., Long. 112°12'50" W.; to Lat. 36°14'40" N., Long. 112°08'50" W.; to Lat. 36°14'40" N., Long. 111°57'30" W.; to Lat. 36°12'30" N., Long. 112°53'50" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 mile of the eastern boundary between the southern boundary and Lat. 36°04'50" N.; and not including the airspace at and above 10,500 feet MSL northwest of a line 1.4 nautical miles southeast of the centerline of the Page VOR 216° True radial. The area bounded by the Bright Angel and Shinumo Flight-Free Zones is designated the "Dragon Corridor."

(c) *Shinumo Flight-Free Zone.* Within an area bounded by a line beginning at Lat. 36°04'00" N., Long. 112°16'40" W; northwest along the park boundary to a point at Lat. 36°11'45" N., Long. 112°32'15" W.; to Lat. 36°21'15" N, Long. 112°20'20" W.; east along the park boundary to Lat. 36°21'15" N., Long. 112°13'55" W.; to Lat. 36°14'40" N., Long. 112°11'25" W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL southeast of a line 2.6 nautical miles northwest of the centerline of the Page VOR 216° True radial. The area between the Thunder River/Toroweap and Shinumo Flight Free Zones is designated the "Fossil Canyon Corridor."

(d) *Toroweap/Thunder River Flight-Free Zone.* Within an area bounded by line beginning at Lat. 36°22'45" N., Long. 112°20'35" W.; thence northeast along the boundary of the Grand Canyon National Park to Lat. 36°15'00" N., Long. 113°03'15" W.; to Lat. 36°15'00" N., Long. 113°07'10" W.; to Lat. 36°10'30" N., Long. 113°07'10" W.; thence east along the Colorado River to the confluence of Havasu Canyon (Lat. 36°18'40" N., Long. 112°45'45" W.;) including that area within a 1.5-nautical-mile radius of Toroweap Overlook (Lat. 36°12'45" N., Long. 113°03'30" W.); to the point of origin; but not including the following airspace designated as the "Tuckup Canyon Corridor": (i) at or above 6,500 feet MSL within an area bounded by Lat. 36°22'55" N., Long. 112°47'40" W.; to Lat. 36°22'55" N. Long. 112°50'00" to Lat. 36°17'10" N., Long. 112°50'00" W., to Lat. 36°17'10" N., Long. 112°47'40" W., to the point of origin, and (ii) at or above 10,500 feet MSL within 1 mile of the eastern and western boundaries of the corridor defined in (d)(i) of this section.

Section 5. *Minimum flight altitudes.* Except in an emergency or if otherwise necessary for safety of flight, or unless otherwise authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft in the Special Flight Rules Area at an altitude lower than the following:

(a) Eastern section from Lees Ferry to North Canyon: 5,000 feet MSL.

(b) Eastern section from North Canyon to Boundary Ridge: 6,000 feet MSL.

(c) Boundary Ridge to Supai (Yumitheska) Point: 7,500 feet MSL.

(d) Supai Point to Diamond Creek: 6,500 feet MSL.

(e) Western section from Diamond Creek to the Grand Wash Cliffs: 5,000 feet MSL.

Section 6. *Commercial sightseeing flights.*

(a) Notwithstanding the provisions of Federal Aviation Regulations § 135.1(b)(2), nonstop sightseeing flights that begin and end at the same airport, are conducted within a 25-statute-mile radius of that airport, and operate in or through the Special Flight Rules Area during any portion of the flight are governed by the provisions of Part 135.

(b) No person holding or required to hold an operating certificate under Part 135 may operate an aircraft in the Special Flight Rules Area except as authorized by operations specifications issued under that part.

Section 7. *Minimum terrain clearance.* Except in an emergency, when necessary for takeoff or landing, or unless authorized by the Flight Standards District Office for a purpose listed in Section 3(b), no person may operate an aircraft within 500 feet of any terrain or structural located between the north and south rims of the Grand Canyon.

Section 8. *Communications.* Except when in contact with the Grand Canyon National Park Airport Traffic Control Tower during arrival or departure or on a search and rescue mission directed by the U.S. Air Force Rescue Coordination Center, no person may operate an aircraft in the Special Flight Rules Area unless he monitors the appropriate frequency continuously while in that airspace.

Section 9. *Termination date.* This Special Federal Aviation Regulation expires on June 15, 1992.

Authority: 49 U.S.C. 1303, 1348, 1354(a), 1421, and 1422; 16 U.S.C. 228g; Pub. L. 100-91, August 18, 1987; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC on May 27, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-12413 Filed 5-27-88; 5:06 pm]

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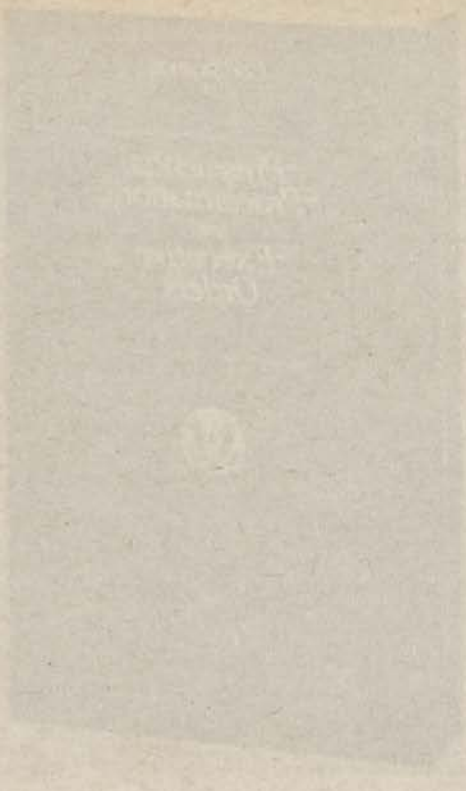
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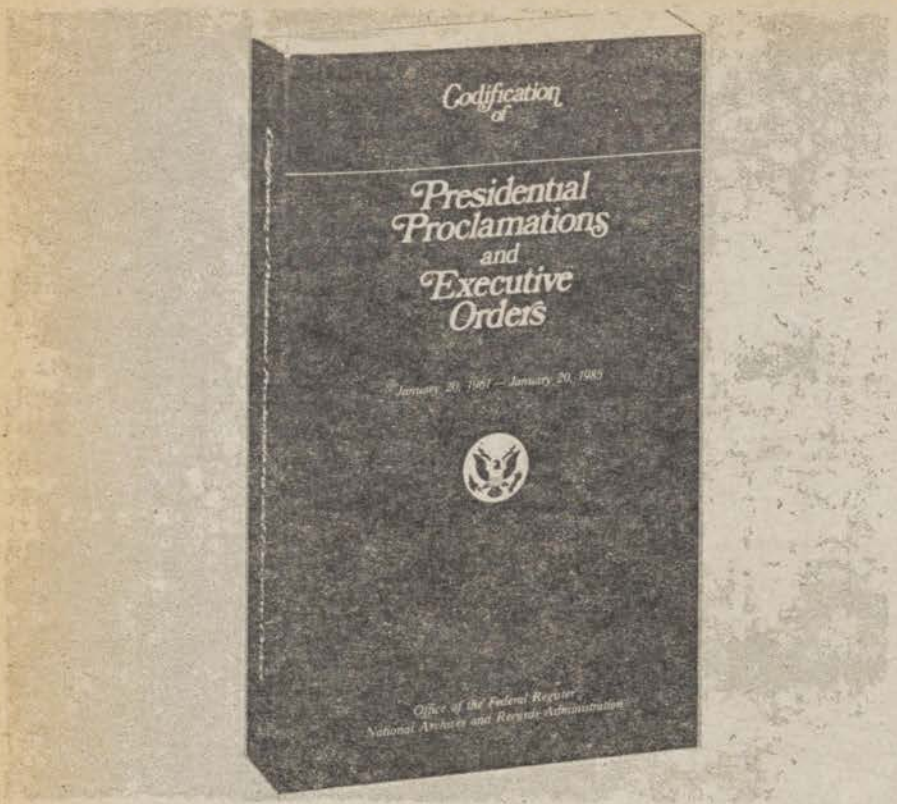
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